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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

12 CV 1422 (JSR)

6 BANK OF AMERICA CORPORATION,  
7 successor to Countrywide  
8 Financial Corporation,  
9 Countrywide Home Loans, Inc.,  
and Full Spectrum Lending, et  
al.,

10 Defendants.

11 -----x

12 New York, N.Y.  
13 September 26, 2013  
9:45 a.m.

14 Before:

15 HON. JED S. RAKOFF,

16 District Judge

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(In open court; jury not present)

THE COURT: Good morning. The jurors were better than yesterday, the last one just arrived, so we're all set to continue, and we'll take up other matters at the midmorning break.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. Thank you for being here reasonably promptly. I have to tell you I am a devoted Yankees fan and they were eliminated last night from playoffs, and that's the only reason I'm wearing a black robe of course. We're ready to continue.

Counsel.

MICHAEL THOMAS,

CROSS-EXAMINATION

BY MR. SULLIVAN:

Q. Good morning, sir.

A. Good morning.

Q. We were looking at a bulletin dated April 25, 2008, sent by your division, am I correct?

A. That's correct.

Q. I'd like you to look at tab number 19, sir. Do you have there a Defendant's Exhibit 66 which is another bulletin?

MR. CORDARO: Excuse me, I don't have a tab number 19 in my binder.

MR. CADY: Counsel, I handed you an update to your

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Thomas - cross

1 binder this morning.

2 MR. SULLIVAN: We can provide one quickly.

3 Q. Do you have tab 19, do you see number 66?

4 A. I do.

5 Q. Sir, is that also a bulletin issued by the division which  
6 states what company policy is?

7 A. Yes.

8 MR. SULLIVAN: I ask that 66 be admitted, please.

9 MR. CORDARO: No objection, your Honor.

10 THE COURT: Received.

11 (Defendant's Exhibit 66 received in evidence)

12 MR. SULLIVAN: Alex, would you put that on the board.

13 Q. Read the title of this bulletin, please.

14 A. Sure. "New clear to close approval process for field  
15 offices and central fulfillment."

16 Q. The date of is April 21, 2008 correct?

17 A. May 21.

18 Q. May 21, 2008, this bulletin number 08-237, am I correct?

19 A. Correct.

20 Q. Do you recall at the time you lived it, five or six years  
21 ago, receiving this bulletin?

22 A. I don't remember it specifically, but I'm sure I did.

23 Q. You've looked at it since then, am I correct?

24 A. I'm not positive I've looked at this one.

25 Q. Let's look at it together then. Please highlight the first

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Thomas - cross

1 paragraph. And read that slowly for the court reporter and  
2 tell us what this is.

3 A. Sure. "The bulletin 08-195 and 08-223 introduced the new  
4 clear to close process that requires loan specialists to submit  
5 every loan to underwriting for a clear to close approval. This  
6 bulletin contains additional information about processing,  
7 underwriting and funding loans using the new clear to close  
8 process, and introduces additional job aids and reference tools  
9 that will facilitate compliance."

10 Q. Did you participate in any way, as one of the members of  
11 the division, in bringing about this change?

12 A. I don't remember participating in this.

13 Q. Take a look at the next sentence, please, and read that for  
14 us.

15 A. "The new clear to close process applies to any loan that is  
16 cleared to close original or resubmission on or after May 22."

17 Q. All right. If you go down to the first bullet point, just  
18 read that first bullet point.

19 A. "All loans are now submitted to underwriting for a clear to  
20 close decision and approval."

21 Q. Sir, what then affected this half on the Hustle loan  
22 process?

23 A. So, it appears the last bulletin we looked at showed a  
24 clear to close checklist, and this is ensuring that maybe they  
25 redesigned the clear to close checklist, but it's another

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Thomas - cross

1 statement of what the clear to close requirements are.

2 Q. I see. Other than reading this, you are not aware in your  
3 recollection back then that they actually redesigned it?

4 A. I can't remember specifically. This was about 10 months  
5 after I had raised my concerns from Drew's e-mail. At this  
6 point in time I was -- I didn't have a team anymore. And I  
7 think most of my folks had found positions elsewhere in the  
8 organization. So, I really wasn't as involved at this point.

9 Q. What, sir?

10 A. As involved at this point.

11 Q. I see. All right. Let's look at what the change does. If  
12 we could go down just to the fourth bullet point, please. Read  
13 that for us, the one under it.

14 A. Sure. "So underwriting will now review all doc and  
15 underwriting doc conditions to ensure that source documentation  
16 used to satisfy the condition is acceptable."

17 Q. What is the source documentation?

18 A. That would be the documentation used to clear the  
19 condition.

20 Q. And the next bullet points, please.

21 A. "A new underwriting SUS checklist has been created to  
22 ensure that the underwriter pays particular attention to those  
23 areas associated with a high number of SUS findings. The  
24 completed underwriting SUS checklist is a required document in  
25 VLF," which is a virtual loan file.

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Thomas - cross

1 Q. By virtual loan file, you mean the one on the computer?

2 A. Correct.

3 Q. The one in CLUES?

4 A. Well, the CLUES report would have been in the virtual loan  
5 file.

6 Q. All right. Turning the page for us, read the second and  
7 third bullet points, please.

8 A. "The LS must prepare the loan file for doc draw before  
9 requesting the clear to close. A clear to close will not be  
10 issued unless all requirements have been satisfied."

11 Q. Jumping down further where it says "procedures and loan  
12 specialists." Does the list below loan specialist provide for  
13 the new procedures that they are to engage in, in the  
14 processing of loans?

15 A. It looks like it, yes.

16 Q. Look, please, if you would, over to paragraph number six,  
17 find that at the bottom of the page. Turn the page one more  
18 time.

19 A. Okay.

20 Q. You see the heading where it says "underwriting two review  
21 process"?

22 A. In step number six?

23 Q. Find paragraph six and way at the bottom of the page and  
24 then turn the page.

25 A. Okay.

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Thomas - cross

1 Q. Then you'll find a title saying "underwriting two review  
2 process."

3 A. Yes.

4 Q. All right. What does the term "stated docs" mean under  
5 that?

6 A. I assume that means docs for a stated income loan, I'm  
7 guessing.

8 Q. Okay. Well, let's not guess. Look down there where it  
9 says "two UW reviews." Can you spot that?

10 A. Yes.

11 Q. Read that sentence and let's see if it clarifies whether  
12 we're talking about stated income loans or not.

13 A. Sure. "Two underwriting reviews are required to be  
14 documented in the stated income worksheet that supports the  
15 reasonability of income before a stated loan can be cleared to  
16 close."

17 Q. All right. Yesterday we talked about the reasonability of  
18 income procedures, am I correct?

19 A. Yes.

20 Q. We actually reviewed a bulletin dated March 17, 2008, that  
21 dealt with that change in procedure, am I correct?

22 A. Yes.

23 Q. Do you now understand then the term "stated docs" refers to  
24 documents in connection with the stated income loan?

25 A. Yes.



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Thomas - cross

1 Q. Yesterday, by the way, I think you used the term liar's  
2 loan. Do you remember that?

3 A. Yes.

4 Q. Was that a term used in the industry in connection with  
5 stated income loans?

6 A. It was a frequent term, kind of a nickname for those loans.

7 Q. Wasn't the term because there was concern that when  
8 borrowers had the right to apply for a stated income loan, that  
9 you were really relying on just their word, without  
10 documentation?

11 A. That's correct.

12 Q. That was a widespread practice in the industry, wasn't it?

13 A. I can't say how widespread. I don't know what the volume  
14 was of those loans in relation to others, but it was -- stated  
15 income loans were common in different companies.

16 Q. Well, you worked at another bank, I think at one time, am I  
17 right, when you had that commute issue?

18 A. Yes, I worked at Washington Mutual.

19 Q. What did you do there?

20 A. I worked on a project on their origination system.

21 Q. Did they have stated income loans?

22 A. I can't say for sure. I would -- because they were a large  
23 bank I would have assumed, but I can't say for sure.

24 Q. At any rate, stated income loans were something we're  
25 generally familiar with not only at Countrywide but in the

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Thomas - cross

1 industry?

2 A. Sure.

3 Q. So tell us then what changes are made here with respect to  
4 the stated income loans that were designed to improve the  
5 quality of your product?

6 MR. CORDARO: Objection, your Honor.

7 THE COURT: Are you referring by "here" to the  
8 document that he said he's not sure he previously reviewed?

9 MR. SULLIVAN: Yes. But he has the document right in  
10 front of him.

11 THE COURT: I know, but then you can make your  
12 arguments from the document. I don't think he has shown he has  
13 further knowledge. You can inquire of that.

14 Q. As you read the document today, can you conclude that this  
15 new policy was intended to focus on quality issues, with  
16 respect to stated income loans?

17 MR. CORDARO: Objection.

18 THE COURT: Ground?

19 MR. CORDARO: I believe it was the same foundation  
20 problem.

21 THE COURT: I think it is a permissible question.  
22 Overruled.

23 A. It looks from the documentation, it looks like it was a  
24 step to make sure underwriting reviewed the income  
25 reasonability for stated loans.

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Thomas - cross

1 Q. Would you read then that "two underwriters" full paragraph  
2 for us.

3 A. "Two underwriting reviews are required to be documented in  
4 the stated income worksheet. That supports the reasonability  
5 of income before a stated loan can be cleared to close. Prior  
6 to clear to closing the file, the clear to close underwriter  
7 must ensure that an underwriter previously reviewed the  
8 reasonability of income and documented their decision in the  
9 stated income worksheet prior to phase code two."

10 Q. All right, sir. Thank you. I believe yesterday you were  
11 asked some questions by government counsel that focused on the  
12 central fulfillment centers, the four of them. Do you remember  
13 that?

14 A. Yes.

15 Q. You were asked to list the four centers and you told us  
16 they were Rosemead, California; Chandler, Arizona; Richardson,  
17 Texas; and Hatboro, Pennsylvania; am I correct?

18 A. That's correct.

19 Q. Is that where the central fulfillment teams were located  
20 that would do the processing and the funding of those  
21 High-Speed Swim Lane loans?

22 A. Yes.

23 Q. You also testified that the processing and the funding of  
24 those Hustle loans did not take place in any other centers,  
25 other than those four, so far as you knew?

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Thomas - cross

1 A. That would be the normal practice, that's correct.

2 Q. Do I understand that you also testified that Countrywide --  
3 strike that.

4 Is it a fact that Countrywide -- strike that.

5 You did testify that Countrywide kept data associated  
6 with loans in those four centers, am I correct?

7 A. Correct, they kept data on all loans.

8 Q. Right. In other words, the data was by code number and  
9 team number, right?

10 A. Yeah, they had a lot of different identifiers in the data.  
11 They could have location identifiers, branch numbers, you would  
12 have a branch number for the loan officers that originated the  
13 file, branch numbers for the processing branches that did the  
14 central fulfillment, and then you could have underwriter  
15 manager name, several different fields in the data.

16 Q. You testified about that yesterday, indicating that  
17 Countrywide kept this data and it reflected the processing  
18 branch numbers, am I correct?

19 A. Correct.

20 Q. What is the processing branch number?

21 A. So, basically in the system that we used, called Edge, they  
22 had different branch numbers which just meant the location of  
23 the electronic file. Not the virtual loan file, but the Edge  
24 system. And each processing team or group had its own branch  
25 number.

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Thomas - cross

1 Q. So, in January of this year, you recall that you faxed to  
2 the government about a 14-page list containing those branch  
3 numbers, am I correct?

4 A. I do recall that, yes.

5 Q. The last contained some central fulfillment branch numbers,  
6 am I correct?

7 A. I believe so.

8 Q. It was the central fulfillment branches where the Hustle  
9 loans were processed, am I right?

10 A. Correct.

11 Q. The list also contained many field branches, am I correct  
12 there?

13 A. If I remember correctly, without looking at the document, I  
14 think that I -- I did show both central fulfillment in a  
15 section and field fulfillment in a section.

16 Q. And the field branches did not process Hustle loans, is  
17 that correct?

18 A. Traditionally no. Sometimes there would be workload  
19 balancing, so I can't say for sure, but there are times because  
20 the files were electronic that if one group was overwhelmed  
21 with volume, we could move volume from one place to another.

22 Q. But generally, the field branches did not use the procedure  
23 that was used for the production of Hustle loans, am I correct?

24 A. That's correct.

25 Q. If you'd look in your binder at tab number 18, you'll see

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Thomas - cross

1 Plaintiff's Exhibit 232. I ask you if that is the list that  
2 you provided to the government by fax in January of 2013.

3 A. It does appear to be so.

4 Q. You were merely trying to provide information requested at  
5 that time, am I correct?

6 A. This was from the corporate QC data that I had, that I had  
7 already turned over to the government. This was kind of a  
8 summary of that which is the branch numbers.

9 Q. All right. I count that to be a 14-page document of a  
10 detailed list, am I correct?

11 A. It sounds about right.

12 Q. You indicated to the government that the central  
13 fulfillment ones were the ones that processed the Hustle loans,  
14 am I correct?

15 A. I believe so.

16 MR. SULLIVAN: Let me admit it first, your Honor.  
17 Plaintiff's 232, please.

18 MR. CORDARO: No objection from the government.

19 THE COURT: Received.

20 (Plaintiff's Exhibit 232 received in evidence)

21 Q. If we look at the list here, it's now on the board. The  
22 first page of the list, which actually for our convenience  
23 we'll call page three because that's the bottom of the document  
24 for you, and I can talk about it. Is that all right?

25 A. Sure.

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Thomas - cross

1 Q. I'm looking at the page marked page 03 which is a fax  
2 number, am I correct?

3 A. Yes.

4 Q. This was faxed to the government on January 9, 2013.  
5 Correct?

6 A. Yes.

7 Q. The term do you see up in the right-hand column the words  
8 "branch fulfillment," do you see branch fulfillment right  
9 there?

10 A. I do.

11 Q. All right. That would be a field operation, would it not?

12 A. Yes.

13 Q. If you look several pages forward to page 06, do you see in  
14 the top-left column the CF initial for central fulfillment, am  
15 I correct? You see central fulfillment?

16 A. Yes.

17 Q. Circled there?

18 A. Yes.

19 Q. So it is the central fulfillment branches listed here that  
20 would have done the Hustle loans that you testified about, am I  
21 correct?

22 A. Correct.

23 Q. If we look back at the very first page, which we're marking  
24 as page 03, the fax is marked page 03, if we look down the  
25 first list and indeed down the next page all the way to the

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Thomas - cross

1 bottom, all those would be field office operations, am I  
2 correct, until you get to the word "central fulfillment" way at  
3 the bottom?

4 A. Correct. So down at the bottom of the first page starts  
5 the central fulfillment.

6 Q. Let's focus on that for just a minute. Central fulfillment  
7 the bottom of page marked 04, am I correct?

8 A. Yes.

9 Q. So everything below there, those code numbers -- tell the  
10 jury what those code numbers mean.

11 A. So all the code numbers again are the branch numbers in the  
12 Edge system.

13 Q. These would be the branches that did use the Hustle  
14 process, am I right?

15 A. Central fulfillment, yes.

16 Q. Central fulfillment. If we turn the page, we're now  
17 looking at page 05, that's all central fulfillment loans branch  
18 numbers listed, correct?

19 A. It may not be all the branch numbers that were central  
20 fulfillment. You have to remember that this list was generated  
21 from an audit report. So, it would have only included branches  
22 that had files that were audited in that report. So I couldn't  
23 say that this was a comprehensive list of branch numbers, but  
24 it is the ones that would show up on that report.

25 Q. You sent it to the government?



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Thomas - cross

1 A. It's the only data I had was around the audits that were  
2 performed, so I could only show that.

3 Q. We are looking at page 05. All those are central  
4 fulfillment branch numbers, right?

5 A. Correct.

6 Q. On the next page, 06, those would all be central  
7 fulfillment, am I right?

8 A. Correct.

9 Q. The same is true of page 07, all central fulfillment codes,  
10 am I right?

11 A. Correct.

12 Q. And then to go to the next page, 08, there are a couple of  
13 codes right at the top that are central fulfillment.

14 A. Correct.

15 Q. Right? Just a couple of them. That would be right under  
16 the CF and the two branches to the right, 6392 and 6393, am I  
17 right?

18 A. Correct.

19 Q. Everything below that you see the word "field"?

20 A. I do.

21 Q. Everything below that, for every page for the rest of the  
22 document, page eight, page nine, page 10, page 11, page 12,  
23 page 13, page 14, page 15, and page 16 are all field  
24 operations, am I correct?

25 A. Correct.

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Thomas - cross

1 Q. They are not central fulfillment operations, am I correct?

2 A. In general, yes. I should say also that some branch  
3 numbers at times during this time period were reused. So if  
4 for some reason we closed a branch, and didn't need that branch  
5 number anymore, it could be repurposed for a central  
6 fulfillment branch. I can't conclusively say that there is not  
7 some crossover there between.

8 Q. That's the list you sent to the government. It is the best  
9 and most accurate list you had, am I right?

10 A. This is the most accurate that I could come up with from  
11 the reports that I had.

12 Q. Thank you very much. Close that up now, sir, if you would.

13 Sir, yesterday on direct examination, you spoke about  
14 the sprint incentive. I wanted you to turn, please, to tab  
15 number 15.

16 A. Okay.

17 Q. Do you see there at tab number 15 an e-mail from your boss  
18 to you?

19 A. I do. It looks like an e-mail from Ed to me with some  
20 other folks copied, yes.

21 Q. Is this defendant's marked 1060?

22 A. Yes.

23 MR. SULLIVAN: I ask it be admitted, please.

24 MR. CORDARO: No objection.

25 THE COURT: Received.

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Thomas - cross

(Defendant's Exhibit 1060 received in evidence)

Q. Let's take a look at this memo if you would. It is dated May 21, 2008, am I correct?

A. That's correct.

Q. In fact, that's very near in date to the document we just looked at, right? This is May. Try to focus us back in those days May 2008 now.

A. Yeah.

Q. All right. You're writing -- Mr. O'Donnell is writing to you, and a bunch of other people are listed there, right? Just remind us who these people are.

A. So, it looks like Cliff Kitashima, the chief credit officer; FSL QC management, which would have been the people doing the rebuttals.

Q. Is that the 36 people we looked at yesterday on the list?

A. From the -- that's an e-mail list, and I don't know for sure what the distribution -- it could have been just the managers.

Q. All right. Go ahead.

A. Pamela Richards who worked for me. Steve Brent who was the head of quality assurance and control, those folks that do the rebuttals worked for. Wade Comeaux who ran central fulfillment. Robert Price, Jim White and David Sallis, I can't remember the exact positions they held at the time. They were underwriting center managers in the past. I can't remember how

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Thomas - cross

1 they folded into the central fulfillment organization.

2 Q. Tell us what this is addressed to the re section, please.

3 A. FSL QC daily reporting package.

4 Q. Just read the very first sentence of the memo itself.

5 A. "Very solid progress yesterday with concluding and  
6 successfully reducing initial SUS files. We need to keep that  
7 same pace today and tomorrow to ensure we achieve our goal of  
8 eliminating any backlog of initial SUS findings received by  
9 May 1st."

10 Q. Is this the rebuttal process that you spoke about on direct  
11 examination?

12 A. Yes.

13 Q. Were many offices within the company focused on the  
14 severely unsatisfactory rating of some loans in order to  
15 address that issue and eliminate that category severely  
16 unsatisfactory, am I right?

17 A. Yeah, they would review the initial SUS to make sure it was  
18 valid.

19 Q. All right. If you would just read the last sentence of the  
20 next paragraph, "the entire group."

21 A. "The entire group has a chance to earn some extra bucks for  
22 the effort. Let's make sure" I'm guessing that should be "they  
23 see the direct connection between reduced random ratings and  
24 increased paychecks."

25 Q. That's the compensation program where you talked about in

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Thomas - cross

1 order to get this team to focus with diligence on the severely  
2 unsatisfactory loans that had that rating, right?

3 A. That's correct.

4 Q. And then he further says "Great day yesterday, keep it up."  
5 And then there is some highlights for random files. Do you see  
6 that?

7 A. Yes.

8 Q. Does random files mean random audit -- in other words,  
9 files that resulted from the random audit?

10 A. I think so, yes.

11 Q. The random audit process is one that is done by the  
12 corporate level, not by the division level itself, am I right?

13 A. That's correct. The entire QC, corporate QC process was  
14 done at the corporate levels.

15 Q. In other words, it's a corporate team plus an in-house  
16 quality control team?

17 A. The corporate team would come up with the ratings. The FSL  
18 team that was involved in the sprint incentive would be kind of  
19 the liaison between the corporate QC auditor that did the  
20 finding and whoever was -- noted as grading the finding.

21 Q. Then he gives the next line "highlights for random file,"  
22 correct?

23 A. Correct.

24 Q. He makes a report. Would you read what his report is. Is  
25 this the status, the progress of being made as of the date of

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Thomas - cross

1 that memo in dealing with this volume of severely  
2 unsatisfactory loan files?

3 MR. CORDARO: Objection, your Honor. It's compound.

4 MR. SULLIVAN: I could ask it another way.

5 THE COURT: Yes.

6 Q. What is it?

7 A. It looks like a report of the progress that the rebuttal  
8 team as made.

9 Q. If you flip the page here, two-thirds of the way down the  
10 page you see where it says "highlights random audits"?

11 A. Yes.

12 Q. Is that too a report of the progress being made by this  
13 team of people focusing on this project?

14 A. It appears so.

15 Q. Would you just tell us, read the first four lines for us,  
16 please.

17 A. "135 initial SUS files have been overturned. 21 initial  
18 SUS files have been finalized as SUS. A total of 239 SUS files  
19 have progressed past stage six, in other words, received a  
20 rebuttal response from corporate QC. A total of 196 initial  
21 SUS files have not progressed past stage five, in other words,  
22 no rebuttal sent to CQC."

23 Q. Okay. Now, we're dealing in this rough period of 2007,  
24 2008. Approximately how many loans went through the division  
25 during that period of time?

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Thomas - cross

1 A. I can't recall in units. I remember for Full Spectrum  
2 Lending, when I started in 2003 we were about \$300 million a  
3 month in loan volume. I think we peaked, I'm not sure when the  
4 peak was, maybe around 2007, at about \$3 billion per month. I  
5 don't know at this time. But I can't remember how many loans  
6 that was.

7 Q. Tell us approximately how many people did it take to  
8 process that volume of loans at the time period you just  
9 referred to?

10 A. Without looking at any staffing reports, I can't remember  
11 how many people were in the division at that point.

12 Q. Do you have any sense at all? We are talking thousands,  
13 aren't we?

14 A. I would guess, but I don't -- I can't remember.  
15 Thousands -- all people involved in Full Spectrum sounds right.

16 Q. Yeah. Was most of this -- strike that.

17 All right, sir. Just to look, would these reports of  
18 the random audit files, were they widely circulated among  
19 people who were involved in the project in your division?

20 A. For the rebuttal process?

21 Q. Yes.

22 A. They were circulated to the people involved in the rebuttal  
23 process. I know I did progress reports I think daily for them.

24 Q. How many days did it take roughly to go through this whole  
25 project?

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Thomas - cross

1 MR. CORDARO: Objection, your Honor.

2 THE COURT: Sustained.

3 Q. Do you remember how many daily reports you would have sent  
4 out?

5 A. I don't remember. It would have been probably until the  
6 quarter one reviews were complete. But I can't remember how  
7 many days that was.

8 Q. Now turn to the tab number three if you would, sir.

9 A. Number?

10 Q. Three.

11 A. Three.

12 Q. Would you identify this, sir? Is this a memorandum from  
13 you dated July 19, to a -- who is that to, several people  
14 including yourself, right?

15 A. Yeah. Yeah, I'm not sure.

16 Q. Sometimes do you include yourself among the addressees in  
17 order to have it in the file?

18 A. It looks like it was addressed to Loren Rodriguez.

19 Q. Is it marked Defendant's Exhibit 193?

20 A. Yes.

21 MR. SULLIVAN: Ask that it be admitted, please.

22 MR. CORDARO: No objection, your Honor.

23 Q. I take it this document --

24 THE COURT: I'm sorry. What was the number?

25 MR. SULLIVAN: DX 193, your Honor.



D9Q3BAN1

Thomas - cross

1 THE COURT: Thank you.

2 (Defendant's Exhibit 193 received in evidence)

3 Q. I take it this is actually before the pilot started,  
4 July 19, 2007, am I right?

5 A. Yes, I think this appears to be some documentation around  
6 some initial discussions that we had on the design team about  
7 how to improve the process in general.

8 Q. You were involved in it at that time, you were sending  
9 along your ideas, like a lot of other people were, am I right?

10 A. I believe this document, if I look down the document, it's  
11 probably a summary of ideas that we discussed. In those  
12 design -- I don't necessarily think all these ideas were mine.  
13 But we definitely discussed these. It was kind of a notes from  
14 one of the design meetings.

15 Q. There were a lot of pages of notes which we'll get to.  
16 These are some of the initial suggestions on how to use  
17 different lanes for prime and subprime loans, am I right?

18 A. That's correct.

19 Q. This was the group you spoke about. These are ideas from  
20 many in the group as to how to better the process, and deal  
21 with the prime loans that needed less hands-on touching, am I  
22 right?

23 A. The hands-on touching, I wouldn't say that definitively,  
24 but yes, it was a project design to treat those types of loans  
25 differently. To figure out if we could have efficiencies in

D9Q3BAN1

Thomas - cross

1 both processes.

2 Q. It is true, isn't it, that subprime lines had to have a lot  
3 of involvement and discretion of an underwriter? By that I  
4 mean a human underwriter.

5 A. I would say that's true. Subprime loans could also get a  
6 CLUES accept which wouldn't necessarily have as much  
7 underwriting involvement as far as that same discretion. It  
8 would have been similar to a prime CLUES accept in how they  
9 processed it. But, yes, subprime loans would have more  
10 underwriting involvement or higher risk loan.

11 Q. Would you sometimes call that manual review?

12 A. Yeah, we could call it manual underwriting.

13 Q. By that we mean a human being manually underwriting?

14 A. True. We could have a prime CLUES refer. If CLUES  
15 couldn't decision it, an underwriter would have to manually  
16 review it.

17 Q. This whole process of colleagues coming together and giving  
18 different ideas was an effort to design a process that dealt  
19 with a better quality of loan, namely a prime loan versus a  
20 subprime loan, am I right?

21 A. It -- I believe it was to deal with the prime loan  
22 specifically, which would have been a lower risk loan.

23 Q. A low risk loan?

24 A. Lower.

25 Q. Lower risk. And that's what prompted the ideas. Can we

D9Q3BAN1

Thomas - cross

1 handle these lower risk loans more efficiently, right?

2 A. I think that's fair.

3 Q. You of course were open minded to handling it more  
4 efficiently, correct?

5 A. Yes.

6 Q. In fact, I think you were the one that suggested whenever  
7 you can get something handled more efficiently, it is lower  
8 cost to the company, am I right?

9 A. That's true.

10 Q. A noble goal always, am I right?

11 A. I think so.

12 Q. Take a look at the document. It is titled "process  
13 improvement ideas." And just read for us what's on the front  
14 page there. Then we'll flip over.

15 A. "One obvious suggestion that I forgot to put on our list:  
16 Build separate organizations to handle prime and subprime or  
17 the defined Swim Lanes."

18 Q. Hold that right there. Could you explain that a little bit  
19 to us. Is this your idea or were you reporting someone else's  
20 idea?

21 A. I think this was an idea from the group that I forgot to  
22 put on the initial list.

23 Q. Okay. And is it possible -- strike that.

24 Did you come up with the idea of Swim Lanes?

25 A. I don't know that I came up with it specifically. We may

D9Q3BAN1

Thomas - cross

1 have discussed it. It kind of came out of the concept of prime  
2 CLUES accept we already in underwriting, we already had  
3 different processes and we called -- just to give you an idea  
4 of what we called Swim Lanes, when you designed out the  
5 process, each kind of horizontal in that process map we call a  
6 Swim Lane. So it just meant it follows a different process  
7 than the other.

8 Q. In other words, Swim Lane, the term Swim Lane was not first  
9 used with Hustle, but it is something that you used at work  
10 before that?

11 A. Swim Lane was just a project management term when you read  
12 the work flow charts.

13 Q. It was a term that existed before the so-called Hustle  
14 loans, am I right?

15 A. Sure.

16 Q. You used it frequently to describe a particular lane in  
17 which a loan traveled, am I right?

18 A. I think that's true.

19 Q. Then someone came up with the idea of adding the word  
20 high-speed, so you have a High-Speed Swim Lane. Is that what  
21 happened?

22 MR. CORDARO: Objection.

23 THE COURT: Sustained.

24 Q. Let's flip a couple of pages over if we could. See page  
25 three there?

D9Q3BAN1

Thomas - cross

1 A. I do.

2 Q. Is Loren the chief person, Loren Rodriguez, who is on the  
3 design team?

4 A. He's the head of the operations support team, or was the  
5 head. And so Mark Barnett, who was kind of the lead, project  
6 lead on this project, reported to Loren.

7 Q. So he's sending you a thank you I guess. Isn't it right  
8 there when he says "I know we can rely on you"?

9 A. Sure.

10 Q. Read what it says. This is Loren's note to you after you  
11 send him this list of ideas, am I right?

12 A. Yes, it appears he's replying to my notes.

13 Q. Just read that for us where it says "knew we could."

14 A. "Knew we could rely on you, Michael. Thanks for the  
15 input."

16 Q. What he's thanking you for is everything that comes below  
17 there on this e-mail, am I right?

18 MR. CORDARO: Objection.

19 Q. What's he thanking you for?

20 MR. CORDARO: Objection.

21 Q. If you know?

22 THE COURT: Sustained.

23 Q. Let's look below near the end of page three. Tell us what  
24 you write there in that introductory paragraph next to the word  
25 "Loren."

D9Q3BAN1

Thomas - cross

1 A. "Loren here's a general list of topics that we've discussed  
2 around improving prime work flow. Some can be applied to lower  
3 FICO processes as well. Many of these we have touched on  
4 already."

5 Q. I think we have a new initials. FICO. You want to tell us  
6 what that is?

7 A. FICO is the credit score of the borrower.

8 Q. What does it actually mean?

9 A. Actually I can't remember what the --

10 Q. Neither can I, but one of my associates will know.

11 One of those initials that's like IBM, you forget.

12 A. Right, you forget.

13 Q. Let's look at the list itself there. At page three. Let's  
14 look at the first heading. Read the first head heading for us.

15 A. "Reduce touches/rework."

16 Q. What do you mean by the word "touches"?

17 A. How many times a file or something would move to a  
18 different person or how many times it required somebody to  
19 touch it, basically.

20 Q. That gets back to the manual versus the non-manual  
21 underwriting concept, doesn't it?

22 A. That could be one touch. There are lots of other touches.  
23 If you're, let's say you had processing, and you had different  
24 people processing different parts of the file, that would be a  
25 process with a lot of touches where you might want just one

D9Q3BAN1

Thomas - cross

1 processor looking at all the things to reduce touches.

2 Q. We are not going to read all this list. I'd like just to  
3 refer to a couple of them. Look at page four, just read the  
4 top line for us.

5 A. Page four, top line says "Lloyd's approach -- no file goes  
6 backward, just to the side for specialized exception  
7 processing."

8 Q. Who is Lloyd?

9 A. Lloyd was the head of the sales organization.

10 Q. Then three lines down, read that for us.

11 A. Which three lines from the top?

12 Q. "Keep authority."

13 A. "Keep authority at lowest levels to avoid escalations."

14 Q. This was one of the suggestions that was made by either you  
15 or someone in the group?

16 A. Yeah, I think it was one of the topics that was discussed.

17 Q. Then if you go down a little further where it says "time  
18 delays." Do you see that?

19 A. Yes.

20 Q. Read that for us.

21 A. "Time delays due to back and forth."

22 Q. What do you mean by that in your memo?

23 A. So, when a file moves back and forth between individuals,  
24 either in the same team or different teams, you lose time.

25 It's got -- typically, because when it goes to somebody else it

D9Q3BAN1

Thomas - cross

1 goes into their queue of work, and so there is not  
2 necessarily -- they are not going to immediately look at it.

3 Q. I see.

4 A. There is a lot of lead time.

5 Q. If you have a good prime loan that should move faster, it  
6 could get lost behind other loans that would take more hands-on  
7 manual care and be slower?

8 A. Basically that was the concept we used in underwriting with  
9 prime CLUES accept.

10 Q. If you go down to where it says "eliminate communication."  
11 Do you see that? Read us those three lines there.

12 A. "Eliminate communication and hand offs for high FICO loans.  
13 Find ways to fulfill loans in one place. In other words, use  
14 income calculator and remove validation in favor of percent of  
15 audits."

16 Q. The further loans listed down that whole page, and, excuse  
17 me, further suggestions down the whole page. Then on the next  
18 page, there is still further single spaced suggestions as  
19 people come together and give ideas about how to design the new  
20 project, am I correct?

21 MR. CORDARO: Objection.

22 THE COURT: Sustained.

23 (Continued on next page)



D9QTBAN2

Thomas - cross

1 BY MR. SULLIVAN:

2 Q. Were these items listed here something you put together  
3 based upon your being present at the meeting?

4 A. It appears they were my notes from the meeting, yes.

5 Q. And you're putting the ideas in one place to facilitate the  
6 design project?

7 A. Typically at the beginning of a process design project  
8 you're taught no idea is a bad idea, list every idea that comes  
9 up, and that's where you start.

10 Q. All right. Turn to tab 4, if you would.

11 A. OK.

12 Q. Now tab 4 you see another email which is dated December 19,  
13 2007.

14 A. December 19, 2007, yes.

15 Q. And this is Defendant's Exhibit 752, am I correct?

16 A. Yes.

17 MR. SULLIVAN: I ask that it be admitted.

18 MR. CORDARO: No objection.

19 THE COURT: Received.

20 (Defendant's Exhibit 752 received in evidence)

21 Q. In this exhibit you are writing to Mary Thomas, who I  
22 assume is no relative, right?

23 A. No relative.

24 Q. And to Loren you're writing as well, and the title of your  
25 email is what?

D9QTBAN2

Thomas - cross

1 A. Clarification of PCA at clear to close process. PCA is  
2 prime CLUES accept.

3 Q. Prime CLUES accept.

4 Now sir, tell us, who is Mary Thomas?

5 A. So Mary Thomas worked in Loren's organization. My  
6 recollection is she was responsible for the bulletins that  
7 would come out.

8 Q. Are you trying to assist her here with writing a bulletin  
9 on or about December 19, 2007?

10 A. It looks like I'm clarifying some points that may be going  
11 into a bulletin.

12 Q. Read the first paragraph for us, please.

13 A. Here are the main topics that we addressed in our regional  
14 BOM -- which is Branch Operation Manager -- calls last week.  
15 The bulletin clarifying the process should include these  
16 points. Per our discussion we may want to -- it should be  
17 "to" -- integrate these points directly into a revised version  
18 of the original bulletin which may require some wordsmithing,  
19 too.

20 Q. In other words, she's charged with the responsibility of  
21 actually writing up the bulletin, some of which we have seen.

22 A. Correct. This was specific to the branch process, not  
23 central fulfillment. This was pre-Hustle.

24 Q. What time did the Hustle project start?

25 A. The Hustle project started in September of 2007, but this

D9QTBAN2

Thomas - cross

1 was not for the central fulfillment organization that employed  
2 the Hustle, this was for the branch process that still had the  
3 prime CLUES accept process, which was the process we had before  
4 Hustle.

5 Q. So are you suggesting this had nothing to do with Hustle?

6 A. I am.

7 Q. Look at the paragraph number CLUES. Do you see it, 2,  
8 CLUES?

9 A. Yes.

10 Q. Read the first sentence for us.

11 A. CLUES is the underwriter.

12 Q. And explain what you meant when you used that phrase?

13 A. So typically when I said CLUES is the underwriter, I think  
14 I mentioned earlier in testimony that one of the issues that  
15 some underwriters would have is even when CLUES gave an accept  
16 on a loan, they would try to re-decision the rules that were in  
17 CLUES. So we didn't want that to happen. The rules in CLUES  
18 were tested, they were valid, they were accepted. So we just  
19 wanted to validate the information that went into CLUES, we  
20 didn't want them to re-underwrite the file.

21 Q. Now in the High-Speed Swim Lane, CLUES was also the  
22 underwriter, wasn't it?

23 A. CLUES did the same function in Hustle as it did in the PCA  
24 process, yes.

25 Q. So in the Hustle program, that sentence "CLUES is the

D9QTBAN2

Thomas - cross

1 underwriter," applies just as validly as it does in the PCA  
2 loan, correct?

3 A. In the way it was meant here, yes.

4 Q. Thank you. Turn, please, to tab 5. This is another email  
5 from you directed to your boss, Mr. O'Donnell, right?

6 A. Correct.

7 Q. It's dated July 24, 2007?

8 A. Yes.

9 Q. And that is actually before the pilot program for Hustle  
10 began, am I right?

11 A. I can't remember the specific date that the pilot began,  
12 but this would have been in the time period. If it hadn't  
13 began, it would been in the discussion of what the process  
14 change may be.

15 Q. Certainly before the so-called roll out of the Hustle?

16 A. Yes, that's correct.

17 Q. Now look, this is Defendant's 217, am I right?

18 A. It is.

19 MR. SULLIVAN: I ask that it be admitted.

20 MR. CORDARO: No objection.

21 THE COURT: Received.

22 (Defendant's Exhibit 217 received in evidence)

23 Q. Here we are talking about the high High-Speed Swim Lane  
24 directly, are we not?

25 A. We are.

D9QTBAN2

Thomas - cross

1 Q. Just read the subject line.

2 A. It's a forwarded email, it says prime High-Speed Swim Lane  
3 session docs for Tuesday, July 24 meeting.

4 Q. Just read the paragraph where it begins "In summary."

5 A. In summary, the work flow is directionally correct with  
6 where we want to go on high FICO loans, but I raised concerns  
7 with the challenges of managing it. There are a lot of  
8 parallel process steps, and I'm not sure we have the work flow  
9 process to manage what to do, by who, and when, for each step.

10 Q. And this, consistent with your earlier step, is an example  
11 of you bringing up concerns, as a member of the division, with  
12 the process as it's being designed, right?

13 A. Yes.

14 Q. And your further concerns are listed here, if you read the  
15 second sentence of the next paragraph.

16 A. I responded by saying that we do want to remove excess  
17 controls from the low risk process, but that the control isn't  
18 the only or the biggest issue.

19 Q. OK. Then the following paragraph, just the first two  
20 sentences, please.

21 A. Anyway, this all looks great on paper, but I don't think  
22 it's going to be easily implemented. The end result may be the  
23 additional -- must be "addition" -- of the income calculator  
24 which may allow us to remove up-front validation.

25 Q. That sentence needs explaining. What do you mean by the

D9QTBAN2

Thomas - cross

1 income calculator?

2 A. So one of the topics that could create some back and forth  
3 with underwriting, I think we talked a little bit about it, but  
4 the income could be calculated slightly differently between the  
5 processor and the underwriter, and that would cause some back  
6 and forth and wasted time. So the income calculator was  
7 intended to standardize the approach of how you calculated  
8 income so that you wouldn't have to do that recalculation of  
9 income at the next step, you could just follow the calculator.

10 Q. And when you say it may allow us to remove up-front  
11 validation, what did you mean there?

12 A. That meant the validation of the income calculation. So  
13 typically the underwriter would validate how the processor  
14 calculated income, so that step wouldn't need to be done  
15 because they would do it in the income calculator.

16 Q. If you look at the last page of the exhibit, there's a note  
17 there from one of your colleagues where it says, "We must." Do  
18 you see that?

19 A. Yes, I think this is from Mark Barnett.

20 Q. He's the chief of the group?

21 A. He was the process engineer, yes.

22 Q. And what is he telling you and others on this email?

23 A. It says we must move quickly to meet the aggressive  
24 timeline for this project. Please review the next steps page  
25 and begin your tasks ASAP. If you have any questions about

D9QTBAN2

Thomas - cross

1 those, please let me know.

2 Q. All right, sir. If you turn to tab number 6.

3 A. OK.

4 Q. This is an email from Mark Barnett to you, and it is dated  
5 August 31, 2007, correct?

6 A. Yes.

7 Q. Now the Swim Lane pilot was ongoing for about two weeks at  
8 that point, am I right?

9 A. Again, I'm not completely certain on the timeline of the  
10 pilot, but I don't dispute that.

11 MR. SULLIVAN: I ask that Defendant's 378 be admitted,  
12 please.

13 MR. CORDARO: No objection.

14 THE COURT: Received.

15 (Defendant's Exhibit 378 received in evidence)

16 Q. Tell us -- this is another email. Now he's responding.  
17 Read what he says back to you.

18 A. He says I am in agreement with Michael. We deliberately  
19 designed the process to minimize hand offs and potential for  
20 back and forth that breeds delays and miscommunications and  
21 therefore rework and duplicate work.

22 Q. If you look down the chain, there's an email from you  
23 August 30, 2007 to Mark and your boss, Mr. O'Donnell, am I  
24 right?

25 A. Yes.

D9QTBAN2

Thomas - cross

1 Q. And read what you say in the first paragraph?

2 A. In the first paragraph I say: I agree that we need to  
3 define the roles more clearly, but I have a different opinion  
4 than Audrey's below. Ultimately I think this is the difference  
5 between Richardson and Chandler models.

6 Q. Let's skip to the paragraph beginning with the word,  
7 "When."

8 A. When it comes to fulfilling the loan, I don't think LS and  
9 underwriter roles should be separated. From our file reviews,  
10 it is clear that an LS processing condition without underwriter  
11 knowledge ends up just chasing what CLUES spits out. A  
12 validator just validates what LS and AE has entered into the  
13 system. When both do their jobs separately, we have seen  
14 delays and missed opportunities. What Hustle can bring with  
15 the combined role and skill set is the ability for the LS to  
16 use underwriting principles and clearing conditions, such as  
17 condition avoidance or alternative conditions. Plus, there is  
18 not a need for validation in the more account management  
19 process that is outlined in the Hustle flow and piloting in  
20 Chandler.

21 Q. Finish up with the next two sentences.

22 A. I'm concerned that the two different roles lead us right  
23 back to the hands off -- excuse me, to the hand offs, and the  
24 lack of accountability we had. The only change from the  
25 current process would be the cubicle location.



D9QTBAN2

Thomas - cross

1 Q. Turn to the tab 7.

2 A. Can you explain what I meant by that?

3 Q. Sure.

4 A. OK.

5 Q. If it's all right with the Judge. Usually you wait for a  
6 question.

7 THE COURT: Go ahead.

8 Q. If you would like to explain, go ahead, sure.

9 A. So at the time we had two different centers piloting this  
10 process, and we were trying to test the Hustle concept of  
11 having the roles combined into one. The pilot had kind of  
12 migrated to two different processes where one center was doing  
13 it the way that we had designed the process, the other center  
14 had gone back to kind of separate roles because they felt  
15 comfortable doing that. So this was a discussion of that where  
16 Audrey, for example, said hey, this process of the separate  
17 roles is working great, I think we need to move forward with  
18 that, and I was saying the Hustle design was designed this way  
19 and this is what we need to test in the pilot.

20 Q. Thank you for that explanation.

21 Now we're looking at tab number 7. And here is  
22 another bulletin dated October 4, 2007, am I correct?

23 A. October 4, yes.

24 Q. This is a time period where the Hustle is actually ongoing  
25 in central fulfillment, am I correct?

D9QTBAN2

Thomas - cross

1 A. Yes, it would have been after the roll out.

2 Q. After the roll out. So this is another bulletin marked  
3 07515. Read the heading and the first sentence, please.

4 A. The heading is condition sign off authority levels matrix  
5 and underwriting approval level authority matrix.

6 Q. What is a matrix?

7 A. Basically a chart that shows who would have what authority  
8 level or what they could do.

9 Q. So read us that, please.

10 A. The condition sign off authority levels matrix and the FSLD  
11 underwriting approval level authority matrix have been updated  
12 in the operating procedures.

13 Q. OK. So that there was a change in who could sign off, is  
14 that basically what this is about?

15 A. Yes, the matrixes had been updated.

16 Q. Did you participate in any way in formulating of this  
17 policy as reflected in the bulletin?

18 A. I wouldn't have updated -- I wouldn't -- I didn't deal with  
19 the authority levels or who should have authority levels and  
20 what they could do. I wouldn't have specifically.

21 Q. Turn to tab 8, please.

22 A. OK.

23 Q. Now tab 8 you'll see a document which is been introduced as  
24 Plaintiff's Number 46, same document. Do you see that?

25 A. Yes.

D9QTBAN2

Thomas - cross

1 Q. And this is a Loren Rodriguez email to you of August 9,  
2 2007.

3 A. Yes.

4 Q. It's also sent to your boss and to Mark Barnett. And read  
5 the first line.

6 A. Should we huddle on your concerns? I want to ensure you  
7 folks are comfortable with the process flow. Just let me know.  
8 Thanks.

9 Q. All right. Now if we turn two pages over, we find that  
10 very sentence that you and I started to talk about when the  
11 cross-examination began. Do you see it with the words, "Now  
12 that being said?"

13 A. Yes.

14 Q. Page 3?

15 A. Yes.

16 Q. You and I focused on the first part of that sentence, and I  
17 want to focus just on the last part now.

18 A. Sure.

19 Q. Go ahead and read the full sentence for us.

20 A. Now that being said, I think the concept and intent behind  
21 the process is correct, but I'm concerned that we are removing  
22 or reducing too many controls and not focused enough on  
23 manufacturing better quality at the front of the process.

24 Q. You may continued.

25 A. I absolutely want to inject speed into the overall process

D9QTBAN2

Thomas - cross

1 to increase pull through -- which is productivity -- and make  
2 the overall process more cost efficient. But we may need to  
3 look at points where the process really slows down. We'll want  
4 to keep this in mind as we tweak the work flow along the way.

5 Q. Now sir, go to tab number 10, if you would. This was  
6 Plaintiff's Exhibit 58 introduced in your direct examination.  
7 Do you see it?

8 A. OK.

9 Q. Now if you look at the second page -- first off, I wanted  
10 to focus on all these people that are addressed on the memo.  
11 Who is the memo from and to?

12 A. Are you talking about the second part?

13 Q. Yes.

14 A. So it's an email from Don Harris to his boss Steve Brent as  
15 well as Cheri Shine, who had I think at this point I can't  
16 remember when she moved from centralized funding into the  
17 central fulfillment organization.

18 Q. What does this email address?

19 A. High-Speed Swim Lane weekly review summary through  
20 September 16, 2007.

21 Q. We talked a little bit about this in your direct  
22 examination, I believe. If you look at the page where it has  
23 there are 129 separate findings. Do you remember talking about  
24 that in your examination?

25 A. Yes.

D9QTBAN2

Thomas - cross

1 Q. And then below that -- do you see that? Below that there  
2 are several lines in which problems are identified, correct?

3 A. Correct.

4 Q. And in the first one it says 53 hall screens and fraud  
5 detectors are complete in VHF. We talked about that yesterday?

6 A. Yes.

7 Q. The other items, are those various problems listed in the  
8 system?

9 A. Listed in the system?

10 Q. Varies problems that have been identified?

11 A. Yes.

12 Q. And the problems that are being identified in these  
13 quantities are put in the memo for people to address and make  
14 whatever changes they believe are appropriate, am I right?

15 A. I think this was -- this memo meant to, yes, highlight what  
16 problems were highest on the list, and then you could adjust  
17 the process or see what was causing those issues. This didn't  
18 have the detail of the individual loans to correct in, but it  
19 was more the macro level.

20 Q. And am I right that it looks to be about 20 different  
21 people that are sent copies so that everybody knows exactly  
22 what the problems are?

23 A. It looks like about that many people copied, and I would  
24 say they know what the audit findings are. The problems -- you  
25 may have had to look deeper into the process for the problems.

D9QTBAN2

Thomas - cross

1 Q. Sorry, I missed the last part of your answer.

2 A. You may have to look deeper into the process to find the  
3 actual problems causing the issues.

4 Q. And somebody had a job to look at the process, I assume?

5 A. Depending on what the issue was, different people may  
6 look -- may look at the issue.

7 Q. Now if you would turn to tab number 12, please.

8 Tab 12 is a memo from your boss, Mr. O'Donnell, to you  
9 dated May 5th, 2008, am I correct?

10 A. Correct.

11 Q. And this, too, relates to the sprint incentive that you  
12 talked about, am I right?

13 A. Let me read it real quick just to make sure.

14 Q. Take a look at the subject line.

15 A. This says SUS update with Greg. That doesn't suggest the  
16 sprint incentive to me, but I see incentive proposal in the  
17 text.

18 Q. Now first off, remind us who Greg is.

19 A. Greg Lumsden was the CEO of Full Spectrum Lending.

20 Q. The top person in the division, am I right?

21 A. In the division, yes.

22 Q. Read this note to the jury.

23 THE COURT: Is this in evidence?

24 MR. SULLIVAN: Sorry, please admitted 64.

25 MR. CORDARO: No objection.

D9QTBAN2

Thomas - cross

1 THE COURT: Received.

2 (Defendant's Exhibit 64 received in evidence)

3 A. For tomorrow's meeting Cliff asked that we include the most  
4 recent loan perform data from Mark Miller. I'll call you in  
5 the morning to discuss. We also want to build in a slide on  
6 the incentive proposal we were toying around with earlier. I  
7 am thinking we structure so that auditors earn a per overturn  
8 spif beginning at audits that take us below 15 percent, but pay  
9 out does not take place until we achieve less than 10 percent  
10 in total.

11 Q. So would this be the beginning idea of how to incentivize  
12 people to focus on the rebuttal project to reverse the SUS  
13 findings?

14 A. Yes.

15 Q. And I think we all know, but the word "spif," does it mean  
16 tip?

17 A. It means extra income.

18 Q. Extra income. Is that a common word in the industry?

19 A. I didn't hear it as much in the mortgage industry, but I  
20 heard it when I worked in retail.

21 Q. So your boss is asking to you prepare a slide on the  
22 incentive proposal that you were toying with earlier. Was it  
23 you and he that sat down and came up with the incentive  
24 proposal?

25 A. I think what he was referring to here is we were looking at

D9QTBAN2

Thomas - cross

1 different levels. I think I had showed him how many overturns  
2 it may take to get to different levels, so I think that is what  
3 he was referring to there.

4 Q. Did people work overtime to get this project done?

5 A. That I don't remember for sure. They could have. I don't  
6 know if those employees were hourly or salaried employees.

7 Q. And is this the 36 employees we talked about before?

8 A. That's what I'm referring to, yes.

9 Q. Sir, if you turn to tab number 13.

10 A. 13?

11 Q. 13.

12 A. OK.

13 Q. There's another email from you, but this time to a person  
14 named Robert Zavala, Z-A-V-A-L-A. Am I correct?

15 A. That's correct.

16 Q. This is dated May 16, 2008.

17 A. Correct.

18 Q. Marked Defendant's Exhibit 1045.

19 MR. SULLIVAN: I ask that it be admitted.

20 MR. CORDARO: No objection.

21 THE COURT: Received.

22 (Defendant's Exhibit 1045 received in evidence)

23 Q. Tell us who Mr. Zavala is.

24 A. Robert Zavala headed up the bonus administration  
25 department.



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Thomas - cross

1 Q. Where is that department located in relation to Full  
2 Spectrum Lending division?

3 A. I think it was part of Full Spectrum Lending. I can't  
4 remember if it was corporate. I think it would have been Full  
5 Spectrum Lending.

6 Q. What did you call his office?

7 A. Bonus administration. He basically -- his team put  
8 together the final calculations for people's bonuses.

9 Q. And your belief is that actually is an office in the  
10 division that focuses on the administrative issues such as  
11 providing bonuses and incentives to employees in your company?

12 A. Yes, it was probably part of the finance group or  
13 something. I can't remember exactly where he reported.

14 Q. At any rate, you're writing to him in the RE column. Tell  
15 us what it says?

16 A. QC sprint incentive Q1 2008.

17 Q. Now as I see in this email, a half dozen people are listed,  
18 right, as copied, receiving copies down at the bottom?

19 A. Yes. Are you talking about the top email or --

20 Q. The next email down.

21 A. From Robert to me?

22 Q. Yes.

23 A. Yes.

24 Q. And those are people who we are familiar with, with the  
25 exception, I think, of Mr. Holder. Who is he?

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Thomas - cross

1 A. Tim Holder.

2 Q. Do you recall him?

3 A. The name sounds familiar but I can't recall.

4 Q. How about Mr. Whelan?

5 A. Again, that name sounds familiar, but I'm not sure.

6 Q. Now Mr. Zavala, executive vice president for incentive  
7 compensation, Countrywide Bank, Full Spectrum Lending division.  
8 So he is in your division?

9 A. Yes, it appears so.

10 Q. Now you wrote him a memo or email which caused him to write  
11 this one, am I correct?

12 A. It looks that way, yes.

13 Q. Let's go to yours, which is on page 3, and you address it  
14 to Robert. Tell us what you say in the first two paragraphs.

15 A. Sure. I believe I'm explaining the sprint incentive. I  
16 had to calculate all the metrics to go into the bonus programs,  
17 and I would explain that to Robert.

18 Q. So tell us what you're telling Robert here, please, the man  
19 charged with administering the bonus programs.

20 A. Here's the sprint incentive that I left you a message about  
21 earlier. The goal here is to provide a short-term incentive  
22 for the QC results of quarter one 2008. These audits are  
23 currently in the review rebuttal process by FSL QC. In order  
24 to achieve our goals for quarter one QC ratings, we require an  
25 increase in the intensity of review and number of findings

D9QTBAN2

Thomas - cross

1 overturned. This incentive is meant to drive that goal.

2 Q. And if you look down, you actually described the plan  
3 further down, where it says "overturns," am I right?

4 A. Correct.

5 Q. Read that six lines or so for us.

6 A. Overturns are equal to the number of random audits with  
7 initial SUS for quarter one 2008 that were downgraded by  
8 corporate QC to a lower rating. Metrics will be taken at the  
9 conclusion of quarter one 2008 random audits, finalized by the  
10 division and corporate QC. Pay out per employee will be given  
11 to all 36 QC employees.

12 Q. Now this is the proposal, I gather, that you and  
13 Mr. O'Donnell wanted to propose, and you're bringing it to the  
14 technical expert, I guess, as what, asking permission or asking  
15 him to put it into effect?

16 A. I can't remember if anybody else had agreed to this at this  
17 point. It sounds more -- it is more of a final proposal that  
18 we would send to Robert to say here's how we plan to calculate  
19 it, he would have to agree to it and say OK, I think that's  
20 appropriate or not.

21 Q. Now would you have spoken -- other than with Mr. O'Donnell,  
22 would you have spoken to other people in the company about this  
23 proposal?

24 MR. CORDARO: Objection, your Honor.

25 THE COURT: As phrased, sustained.

D9QTBAN2

Thomas - cross

1 Q. Did you get permission to initiate the proposal other than  
2 from Mr. O'Donnell?

3 A. Sorry, what do you mean by "initiate the proposal?"

4 Q. Did you get -- is this something that you and Mr. O'Donnell  
5 did, or were there discussions and approvals at a higher level  
6 in the company?

7 MR. CORDARO: Objection.

8 THE COURT: Overruled.

9 A. So I believe I provided Ed with the metrics on this. He  
10 may have -- I remember including it in decks or presentations  
11 that Ed presented, but I don't know who Ed presented it to or  
12 who ultimately had to approve it.

13 Q. So let's go to Mr. Zavala's response to you, and just read  
14 the first paragraph, please.

15 A. Starting with number one?

16 Q. Yes, please, just above that.

17 A. Per my decision with Michael, here are some questions we  
18 will need clarified. One, effective date. We are assuming May  
19 production, payable end of June, and I will need an end date  
20 for now. We can always extend this later if needed. The first  
21 pay out would be for quarter one SUSs, but yes, it is largely  
22 May's work for these auditors and will need to make it payable  
23 end of June. Ed, what would you say the end date would be  
24 after we create the monthly MBO -- which stood for management  
25 by objective, it's kind of a goal that would go into bonuses --

D9QTBAN2

Thomas - cross

1 after this initial pay out. Maybe September 2008?

2 Q. All right. Now jumping to paragraph four, just read that,  
3 please.

4 A. We will need for you to provide the results for this by the  
5 8th business day of the month following the production period.  
6 For May production we'll he need the data by the 8th business  
7 day of June. This will ensure that they are paid timely. Ed,  
8 do you think we'll be able to have the pipeline completed by  
9 8th business day of June?

10 Q. All right, sir. If you would jump to tab 17, please.

11 A. OK.

12 Q. There you have an email from your boss, Mr. O'Donnell, to  
13 you. This is dated April 25, 2008, am I right?

14 A. Yes.

15 Q. All right. Would you read that for us, please.

16 A. Read what Ed wrote to me?

17 MR. CORDARO: Objection, your Honor, I don't believe  
18 it's in evidence yet.

19 MR. SULLIVAN: Sorry. Defendant's 1012.

20 MR. CORDARO: No objection.

21 THE COURT: Received.

22 (Defendant's Exhibit 1012 received in evidence)

23 Q. Would you like to start with your memo one, read it in  
24 correct order, sir, your note to him, then him back.

25 A. So my note to Ed --

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Thomas - cross

1 Q. That starts at -- you go ahead and read your note to Ed on  
2 April 25.

3 A. Looks like there's some correspondence before that about a  
4 technology issue, and I said: No one knows. I think he asked:  
5 Who is on the hook for the technology issue? No one knows.

6 Just talked to Cliff. He was just as frustrated.  
7 Brent said Rebecca rolled her eyes quite a bit when I confirmed  
8 that the issue is not a behavioral problem but a process  
9 problem. It gave me comfort just to know I got under her skin  
10 a little.

11 Q. There's a little tiny smile there?

12 A. Smiley face.

13 Q. And this is just -- is this kind of office humor?

14 A. Well, this was again the point -- this is April of 2008  
15 where I was -- I think we looked at several emails where I said  
16 OK, six, seven months later we've got the same problems we knew  
17 existed in August, so I was pretty frustrated by that, and it  
18 took us seven months to step up to the plate. And so I was  
19 happy that at least we got some concurrence that there's a  
20 process problem.

21 Q. There was some friction between Rebecca and your boss, Ed  
22 O'Donnell, because he didn't get one particular job that he  
23 sought, am I correct?

24 MR. CORDARO: Objection.

25 THE COURT: Sustained.

D9QTBAN2

Thomas - cross

1 Q. Read the note from Mr. O'Donnell back to you.

2 A. He said: I know the feeling. She's got rubber bullets in  
3 her gun and we are going nuclear.

4 MR. SULLIVAN: All right, sir, that's all I have.

5 THE COURT: All right. Why don't we give -- well,  
6 we'll start at least any cross from Ms. Mairone's counsel.

7 MR. SULLIVAN: Your Honor, I was told I was moving so  
8 fast I did not formally admit the Defendant's Exhibit DX 33.  
9 Let the record reflect that is a bulletin of October 4th, 2007.

10 MR. CORDARO: Could I have the tab number, please?

11 MR. SULLIVAN: Tab 7.

12 MR. CORDARO: No objection.

13 THE COURT: Received.

14 (Defendant's Exhibit 33 received in evidence)

15 MR. SULLIVAN: Thank you.

16 MR. HEFTER: Your Honor, I was going to ask your Honor  
17 if we could take a break now because I will be using documents  
18 and binders, and it may make sense to streamline everything  
19 to --

20 THE COURT: All right. Ladies and gentlemen, we'll  
21 take our mid-morning break now for about ten or fifteen  
22 minutes.

23 (Continued on next page)

D9QTBAN2

Thomas - cross

1 (Jury not present)

2 THE COURT: Did I hear earlier that no one knew what  
3 FICO stands for? So it stands for Fair Isaac Company. It's a  
4 company put together by two economists, Mr. Fair and  
5 Mr. Isaac -- Fair Isaac is not an Old Testament reference --  
6 and they came up with a credit score formally that's been used  
7 ever since. I thought everyone knew that.

8 Anyway, there was some applications I have received.  
9 First from Ms. Mairone's counsel, a letter brief seeking to  
10 strike certain testimony from the Boland deposition, but I  
11 don't know if it's offered yet because I haven't received the  
12 new Boland marked up transcript.

13 MR. MUKASEY: I thought the new designations had been  
14 put in by both sides. I'm not sure when --

15 THE COURT: Let me ask if my law clerk has it. Maybe  
16 he has it. I haven't received, I know that.

17 MS. SCHOENBERGER: It hasn't been offered yet.

18 THE COURT: So it is, in that sense, premature. But  
19 might as well find out, is the government going to offer that  
20 testimony?

21 MS. SCHOENBERGER: Yes, your Honor.

22 THE COURT: So the testimony is, from the deposition  
23 of Mr. Boland, beginning at page 98, and it's referring to a  
24 so-called town hall meeting at which employees pose questions  
25 to, among others, Ms. Mairone, and Mr. Neal Ballance,



D9QTBAN2

Thomas - cross

1 B-A-L-L-A-N-C-E, according to Mr. Boland, who was particularly  
2 outspoken and raised a comparison between the statements of  
3 Angelo Mozilo to Congress and what allegedly was being said by  
4 the executives at the meeting, and in particular Ms. Mairone's  
5 statements regarding the Hustle initiative. And after he said  
6 that representations -- what was being said by Mr. Mozilo and  
7 what was being said by Ms. Mairone was "very, very different,"  
8 there was the following testimony from Mr. Boland at page 99,  
9 beginning line 6:

10 "Q. And what was Ms. Mairone's response to that?

11 "A. She was -- she was visibly upset, I think she felt  
12 challenged, and in her -- her response, there was an expletive  
13 that sent a message to the team that questions like that were  
14 not -- not welcome."

15 There was an objection made on the record improperly  
16 that, "Objection, is non-responsive." Of course, that  
17 objection is not preserved. That's not an objection to form,  
18 which is the only kind of objection that should ever be stated  
19 on the record at a deposition. But putting aside that mistake,  
20 which was repeated repeatedly by defense counsel throughout  
21 this colloquy, the next question is by the government:

22 "Q. What expletive was used?

23 "A. I don't recall the exact expletive, but it was so shocking  
24 that I remember a word of profanity being used. I had never  
25 seen an executive use profanity, even in a closed meeting like

D9QTBAN2

Thomas - cross

1 that, in my years in the professional world, so it was shocking  
2 to me and it stood out in my mind."

3 So it goes on, but that's the gist of it. And clearly  
4 Mr. Boland leads a quite sheltered life, but what possible  
5 relevance does this have?

6 MS. SCHOENBERGER: To be clear, your Honor, the  
7 portions of the testimony that the government would be offering  
8 would be starting on page 98 at line 3 and stopping at page 99  
9 at line 11. And it was actually the defendants who appeared to  
10 be offering lines 14 to 21.

11 The government would also offer --

12 THE COURT: Let's just take -- so page 98, line 3, to  
13 page 99, line 11, what's the relevance of any of that?

14 MS. SCHOENBERGER: The relevance is there was concern  
15 about the Hustle and its impact on quality, and those were  
16 raised to senior management within the company.

17 THE COURT: The only thing that's said in this  
18 testimony is that Mr. Ballance felt that there was an  
19 inconsistency between what Mr. Mozilo said to Congress and what  
20 Ms. Mairone had been saying to folks at Countrywide in  
21 connection with Hustle. But all that's asserted is that the  
22 question was that those presentations were "very, very  
23 different," and she was asked to reconcile that.

24 And he never says at any point what she actually said.  
25 What he says instead, the testimony you just said you wanted to

D9QTBAN2

Thomas - cross

1 offer, beginning at page 99, line 8: She was visibly upset. I  
2 think she felt challenged. This is because of Mr. Ballance's  
3 deep intuition into someone else's mental state. "In her  
4 response, there was an expletive that sent a message to the  
5 team that questions like that were not welcome." This is  
6 obviously opinion evidence which is not formally admissible.

7 MS. SCHOENBERGER: Well, the main relevance of this  
8 passage here is the fact that there was concerns. And while  
9 Mr. Boland doesn't specifically say that the reason that the  
10 Hustle isn't reconcilable with the statements before Congress  
11 is because of quality, the suggestion is there because the  
12 statements refer to Countrywide's commitment to quality, and  
13 asking that to be reconciled with the Hustle suggests that the  
14 Hustle is not quality. So the fact that the underwriters on  
15 the ground were having these types of concerns and those  
16 concerns were raised to management is relevant.

17 THE COURT: If the assertion is that Mr. Ballance was  
18 concerned that Mr. Mozilo was lying to Congress, that's  
19 irrelevant to any issue in this case. I don't see -- if this  
20 is being offered with respect to Ms. Mairone, which is  
21 seemingly the purpose of the offer, I don't see how you draw  
22 the inference you have just drawn. The most you can say about  
23 this is that in Mr. Ballance, according to Mr. Boland, who  
24 apparently is incapable of actually repeating a conversation  
25 but only makes characterizations, summary conclusions and the

D9QTBAN2

Thomas - cross

1 like, says Mr. Ballance raised a comparison between the  
2 statements of Angela Mozilo to Congress that was on C-SPAN the  
3 evening prior, and Mr. Mozilo made affirmative statements about  
4 Countrywide's commitment to quality, their processes, doing the  
5 right thing. Let me pause there. No indication that that had  
6 to do with Hustle necessarily. He answered a number of  
7 questions that would lead you to believe that Countrywide was  
8 doing business as usual, the way we have always, ethically and  
9 honestly and following their principles. And Neal phrased a  
10 question to Ms. Mairone and compared the statements of  
11 Mr. Mozilo the night before to the Hustle and the initiative  
12 that she was championing and wanted a reaction from her about  
13 if Angelo says these things to Congress and you say these  
14 things, they're very, very different, how do you reconcile  
15 that?

16 Now no juror can even really understand what  
17 specifically is being referred to there because there is no  
18 specification, it's all very vague. And in response, we get  
19 just one opinion after another. Answer: She was visibly  
20 upset. That might conceivably come in as a lay perception, but  
21 then he follows it with: I think she felt challenged. No  
22 witness is going to testify to that. And in her response there  
23 was an expletive. Which he can't remember, by the way, but  
24 shocked him to the deep marrow of his core, that, quote, sent a  
25 message to the team that questions like that were not welcome.

D9QTBAN2

Thomas - cross

1           How the heck -- because I don't want to use an  
2           expletive -- can he possibly infer that in any way that would  
3           make it more than just an opinion that would not be admissible  
4           from a percipient witness?

5           MS. SCHOENBERGER: It would be his opinions based on  
6           his perception of what occurred at the meeting.

7           THE COURT: All right. Well, you have made your best  
8           shot, but -- tried your best shot, but I am going to sustain  
9           the objection.

10          All right.

11          MR. MUKASEY: We'll therefore withdraw our counter  
12          designations with respect to the passage.

13          THE COURT: OK.

14          MS. SCHOENBERGER: And there is continued testimony  
15          regarding this I believe on page 99, line 24, to --

16          THE COURT: Sorry?

17          MS. SCHOENBERGER: -- 109. I'm not sure if  
18          Ms. Mairone's counsel's brief refers to that.

19          MR. MUKASEY: The brief only refers, Judge, to the  
20          section you just analyzed and the counter designations on page  
21          99.

22          THE COURT: When I see the actual deposition I will  
23          rule on the rest of it, but I wanted to hear from the  
24          government. But I get the general idea. And I will take a  
25          look at it in the context of anything else that is offered and

D9QTBAN2

Thomas - cross

1 objected to.

2 MS. SCHOENBERGER: Understood. And with respect to  
3 the transcript, we expect that to be finalized and we could  
4 submit that in the morning.

5 THE COURT: OK. That's fine.

6 Now I received the bank defendants' witness list,  
7 which was certainly not what I expected. When I had a  
8 telephone call with counsel at the government's initiative  
9 shortly before the start of trial, the government said that the  
10 bank had designated something like 56 or some witnesses, I  
11 can't remember the exact number, but a very large number of  
12 witnesses. And that the government had deep doubts whether  
13 this was anything other than a tactic to force the government  
14 to prepare for all sorts of witnesses who the government  
15 suspected were not going to be called; an argument to which the  
16 defense, of course, should be sympathetic, since they made much  
17 the same argument yesterday with respect to Mr. Boland, that  
18 they spent all this time preparing for Mr. Boland's live  
19 testimony and now they were finding out that he wasn't going to  
20 be presented live.

21 The defense counsel responded that, first, even if all  
22 their witnesses were called, they were confident that they  
23 would be -- including any cross-examination, redirect and the  
24 like -- completed within the three weeks that they had asked  
25 for their case. And I assure you, that representation will be

D9QTBAN2

Thomas - cross

1 enforced in stone, and if we are in the middle of a witness  
2 when the defenses' three weeks is over, we will stop that  
3 witness right then and there, unless it's on the government's  
4 cross, and no further witnesses will be called.

5 But defense counsel also said that she thought that  
6 after I ruled on the motions in limine that many of these  
7 witnesses, or at least some of these witnesses, would no longer  
8 need to be called. I ruled on the motions in limine, and I  
9 think the common denominator of most of my rulings was to  
10 narrow the case. But instead, here we have an endless list of  
11 witnesses, of which only one is indicated as, quote, likely  
12 out, that's Nancy Bush. There's listed, for example,  
13 Dr. Christopher James, even though my recollection was that he  
14 was being called to rebut Dr. McFadden and the government has  
15 withdrawn Dr. McFadden.

16 But let me hear from defense counsel.

17 (Continued on next page)

18  
19  
20  
21  
22  
23  
24  
25

D9q3ban4

1 MS. MAINIGI: Yes, your Honor. This list of names is  
2 confusing. There are several people that have been eliminated  
3 from this list, your Honor, since the last time I believe you  
4 saw it. Some of those people include Mr. O'Donnell, who the  
5 government is obviously calling in their case, the Fannie Mae  
6 corporate representative has been eliminated as a result of the  
7 ruling on the 30(b)(6) motion. We expect to remove John  
8 Forlines from the list, because the government intends to call  
9 Mr. Forlines in their case. Mr. Tanabe, same issue, we expect  
10 to remove him because the government intends to call  
11 Mr. Tanabe. The Freddie Mac corporate representative, your  
12 Honor, has been fully removed from our list as well. Nancy  
13 Bush, the qualification was put in there simply because  
14 depending upon what comes in on the repurchase issue, we may  
15 pull her all together, but we would like the opportunity to  
16 wait for the government's case to close there first.

17 Then, towards the back of the list obviously  
18 Mr. Armand is removed, Mr. Phil Wertz was removed as a result  
19 of the indemnification issue coming out of the case,  
20 Mr. Jonathan Walker, one of our experts was removed as a result  
21 of penalties coming out of the case that the jury hears. The  
22 FHFA entity was removed also as a result of the ruling on the  
23 30(b)(6) motion, your Honor.

24 With respect to Mr. Sobczak, we think he will come out  
25 of our case as well because the government intends to call him.



D9q3ban4

1 I missed him on the first round.

2 There are a large number of witnesses, your Honor,  
3 that are in essentially the middle of our witness list that I  
4 believe I represented to your Honor last week on the telephone,  
5 and this remains true, that these are very quick witnesses.  
6 These are folks that were on the ground during the High-Speed  
7 Swim Lane in a variety of roles in a variety of the different  
8 centers that implemented the High-Speed Swim Lane. All of  
9 these people are critical to our case in terms of our defense  
10 here, to show essentially the normalcy of the process, what  
11 people were thinking, the people's intent, and how it all came  
12 together. We very much believe we can put on our case in three  
13 weeks.

14 THE COURT: No. Whether you believe it or not.  
15 That's --

16 MS. MAINIGI: We understand. We are getting cut off.  
17 That's fine. We'll take that.

18 THE COURT: What about Dr. James?

19 MS. MAINIGI: May I ask my colleague Mr. Smurzynski to  
20 address that, please.

21 MR. SMURZYNSKI: There are two issues.

22 THE COURT: You need to identify yourself.

23 MR. SMURZYNSKI: Ken Smurzynski. With respect to  
24 Dr. James, he was not strictly a rebuttal witness to  
25 Dr. McFadden, although it addressed Dr. McFadden's opinions.

D9q3ban4

1 There are other things that Dr. James opines on that are  
2 relevant, including if Mr. Holt is allowed to testify and  
3 Dr. Cowen is allowed to testify, about whether the material  
4 defects in fact were with respect to loans that had an  
5 increased risk. He analyzes those and identifies the fact that  
6 when you control for borrow characteristics, loan  
7 characteristics, you see that there was not in fact an  
8 increased risk of loss with those loans.

9 So, we believe that's a basis for striking Mr. Holt,  
10 that was our Daubert motion. I understand that hasn't been  
11 resolved yet. But that's one issue.

12 THE COURT: All right. I'm skeptical that he'll end  
13 up testifying, but thank you for letting me know that.

14 By the way, in the second page of what you gave me,  
15 you have Charles Grice but you don't list him as an expert.  
16 Wasn't he --

17 MS. MAINIGI: Your Honor, that's clearly an oversight  
18 on our part.

19 THE COURT: Also, I'm not sure, two people you do list  
20 as experts, Mr. Broeksmit and Mr. Lucco, what are they  
21 testifying about?

22 MS. MAINIGI: They speak towards the underwriting that  
23 Mr. Holt did.

24 THE COURT: I see. All right. Let me hear from the  
25 government.

D9q3ban4

1 MR. ARMAND: Your Honor, I think in addition to some  
2 issues we just discussed, there's I think Pauline Munro-Kennedy  
3 was a person that had been put on their list regarding  
4 repurchasing, and since that topic is out, I am not sure why  
5 she's still on the list.

6 THE COURT: Where is that?

7 MR. ARMAND: In the middle. Right above Dr. --

8 THE COURT: Yes. Okay.

9 MR. ARMAND: There were other witnesses during the  
10 fact discovery who were represented to us who were unable to  
11 travel. This was before we made the application about having  
12 current employees travel to New York for depositions. There  
13 were certain people, because of their personal circumstances,  
14 Cheri Shine and Adela Zamarripa, that they weren't able to  
15 travel. We agreed we would travel to them. Or at least we  
16 ended up not deposing Ms. Shine, but we did travel out for  
17 Ms. Zamarripa. I'm surprised the two of them are on the list.  
18 But I think just the length of the list, I think what we are  
19 going to have here is just a lot of cumulative repetitive  
20 testimony.

21 THE COURT: I suspect that's right. But I don't think  
22 I can rule on that yet. So I'm not going to take further  
23 action yet. But it is an issue very much in the Court's mind,  
24 and we will revisit it no later than the start of the defense  
25 case. I understand that you're being placed in an awkward

D9q3ban4

1 position and I'm sympathetic to that and that will be factored  
2 into any rulings I make.

3 But let me ask defense counsel what about  
4 Munro-Kennedy?

5 MS. MAINIGI: Ms. Munro-Kennedy in fact was not going  
6 to testify regarding repurchases. She was the relationship  
7 manager between Countrywide and the GSEs. She had quite a bit  
8 of day-to-day interaction with the GSEs, and given that the  
9 GSEs are the alleged victim here, we obviously think that's  
10 critical.

11 THE COURT: Okay. Then finally, you list Ms. Mairone.  
12 Isn't she being called on the government's case?

13 MS. MAINIGI: That was the original intention. The  
14 government has since informed us that they do not intend to  
15 call her anymore.

16 THE COURT: So, if this is the order in which you are  
17 going to call witnesses, you may not get to Ms. Mairone. But  
18 I'm sure the jury won't mind that. As long as they're able to  
19 hear from the LaCrecia Whirl, Laurie Ann Smith, Donna Braaten,  
20 and Rachel Doty.

21 I know there are other matters. We'll have to take  
22 them up at the next break.

23 MS. MAINIGI: That's fine, your Honor. Thank you.

24 (Recess)

25 (Continued on next page)

D9q3ban4

(In open court; jury present)

MR. HEFTER: May I proceed, your Honor?

Ladies and gentlemen of the jury, your Honor, Michael Hefter on behalf of Rebecca Mairone.

CROSS-EXAMINATION

BY MR. HEFTER:

Q. Mr. Thomas, good morning.

A. Good morning.

Q. We've never met before, correct?

A. No.

Q. I want to get a sense of the organizational structure of the FSL division of Countrywide. Is that okay?

A. Sure.

Q. First of all, you worked out of Richardson, Texas, correct?

A. Yes, when I moved to Texas.

Q. Right. So from the time that you moved to Texas all the way through the time that you left the bank, you worked in Richardson, Texas, correct?

A. Correct.

Q. That's where one of the central fulfillment centers was located, is that correct?

A. Correct.

Q. I think you testified there were other fulfillment centers as well?

A. Correct.

D9q3ban4

Thomas - cross

1 Q. That is not where the headquarters of the Full Spectrum  
2 Lending Division was located, is that correct?

3 A. That's correct.

4 Q. That location was Pasadena, California, correct?

5 A. Correct.

6 Q. Few miles from the Rose Bowl?

7 A. Yeah, I worked at that office for a while as well.

8 Q. At the time of the High-Speed Swim Lane pilot, you worked  
9 out of the Richardson, Texas, facility, correct?

10 A. That's correct.

11 Q. During that time period, Rebecca Mairone worked out of the  
12 Pasadena office, correct?

13 A. I believe so.

14 Q. That's where her main office was, right?

15 A. Correct.

16 Q. That's where Mr. Lumsden the president and CEO of Full  
17 Spectrum Lending, that's where his office was, correct?

18 A. That's correct.

19 Q. That's where Mr. Kitashima, the chief credit officer, the  
20 person directly responsible for credit quality in the  
21 organization, he was located in Pasadena as well?

22 A. That's correct.

23 Q. That's where Mr. Kucma, the chief financial officer of the  
24 organization, had his office as well, correct?

25 A. Yes. When he was there, yeah. He left I think before

D9q3ban4

Thomas - cross

1 that.

2 Q. Then there was another chief financial officer as well,  
3 correct?

4 A. Correct.

5 Q. What was his name?

6 A. Ron Staaake.

7 Q. Thank you. Mr. Sergeant, Lloyd Sergeant, you remember him?

8 A. Yes.

9 Q. He was the head of the sales force, correct?

10 A. Correct.

11 Q. Where was his office located?

12 A. I believe he also had an office in Pasadena.

13 Q. So the entire senior management organization of FSL  
14 Countrywide Division was located in Pasadena, correct?

15 A. Correct.

16 Q. You worked out of Richardson, right?

17 A. I did. At that time.

18 Q. I'm just trying to get a sense where you sat on the  
19 organizational chart. What was your title?

20 A. My title at that timeframe, 2007, 2008, was first vice  
21 president of risk management.

22 Q. You reported directly to Mr. Ed O'Donnell, correct?

23 A. Correct.

24 Q. Mr. O'Donnell's office was located in Texas, right?

25 A. It was.

D9q3ban4

Thomas - cross

1 Q. Mr. O'Donnell reported to Mr. Kitashima?

2 A. Yes.

3 Q. By order of magnitude, do you know how many first vice  
4 presidents there were?

5 A. I don't. I don't remember.

6 Q. More than 20?

7 A. Probably. Definitely Countrywide over all. I don't  
8 remember how many in Full Spectrum.

9 MR. HEFTER: If I can put up -- I'm sorry. If I can  
10 hand the witness, your Honor, DX 4036.

11 THE COURT: Okay.

12 MR. HEFTER: I think I mentioned, your Honor, that  
13 most of the documents I'll be using were already in the  
14 government's binders or the bank's binders. This is not one of  
15 them.

16 Q. Mr. Thomas --

17 THE COURT: That's all right. A number like 4036, you  
18 know will just stick in everyone's memory like that.

19 Q. Mr. Thomas, have you ever seen this document before?

20 A. It looks -- all these documents look familiar. It's  
21 possible that I've seen this document before. I don't know for  
22 sure.

23 Q. This document DX 4036 is something called a slide deck, is  
24 that correct?

25 A. Yeah, we called them a deck, yeah.



D9q3ban4

Thomas - cross

1 Q. Can you just describe for the jury what a deck is.

2 A. A presentation.

3 Q. This is something called like a PowerPoint presentation?

4 A. Yes.

5 Q. These things were regularly conducted at Countrywide at the  
6 time?

7 A. Yes.

8 Q. This one is authored by Mr. Kitashima and Mr. Brent?

9 A. It appears so, yes.

10 MR. HEFTER: We'll offer DX 4036 into evidence.

11 MR. CORDARO: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit 4036 received in evidence)

14 Q. What I really want to do, Mr. Thomas, is take a look at the  
15 third page of the exhibit, the second page of the slide deck,  
16 you see that?

17 A. Yes.

18 Q. Now if you look down at the bottom there is a notation that  
19 says REV 9/4/07. Do you see that?

20 A. Yes.

21 Q. Does this indicate to you that this was the organizational  
22 chart of Full Spectrum Lending in or around September 4, 2007?

23 A. Yes, I would assume.

24 MR. HEFTER: If we go up to the top, if we highlight  
25 Alex, if we can go down to the next level, too.

D9q3ban4

Thomas - cross

1 Q. This shows the senior level management of Full Spectrum  
2 Lending as you just testified, correct?

3 A. Correct.

4 Q. At that time. So if you go to the left, it says Clifford  
5 Kitashima M.D. chief credit slash compliance officer. Do you  
6 see that?

7 A. Yes.

8 Q. What's an M.D.?

9 A. Managing director.

10 Q. It's not a medical doctor, right?

11 A. Not a medical doctor, no.

12 Q. So Mr. Kitashima was a managing director. Do you know how  
13 many managing directors were in Countrywide?

14 A. Not in Countrywide. This would have been the four in Full  
15 Spectrums.

16 Q. There would have been managing directors at the other  
17 divisions, wholesale lending division, CMV, correct?

18 A. Correct.

19 MR. HEFTER: If you just highlight, Alex, if you will  
20 just right below Mr. Kitashima, just do the whole stack of  
21 people there.

22 Q. Do you recognize those people?

23 A. I do.

24 Q. Mr. Jaraba was the senior vice president in charge of risk  
25 management?

D9q3ban4

Thomas - cross

1 A. Yes, sir.

2 Q. Mr. Brent was the senior vice president of quality  
3 assurance and control at the time?

4 A. Yes.

5 Q. Mr. O'Donnell was the executive vice president of central  
6 services slash underwriting?

7 A. Yes.

8 Q. It says central services there. Tell me what central  
9 services was at this point in time?

10 A. So central services was the centralized underwriting team  
11 and the centralized funding team.

12 Q. That all reported up through Mr. O'Donnell at the time,  
13 correct?

14 A. At that time, yes. Because it looks like previously Cheri  
15 Shine was overall the centralized funding, and she's over in  
16 Lloyd Sergeant's chain of command here.

17 Q. We'll get to Lloyd Sergeant in a second. You have Alice  
18 Basmadjian. She was an executive vice president of compliance  
19 and fair lending. You see that?

20 A. Yes.

21 Q. All those people worked in central service, right?

22 A. Well, they worked for Cliff Kitashima.

23 Q. Let's turn our attention to the next column of people. So,  
24 at the top is Lloyd Sergeant, right?

25 A. Correct.

D9q3ban4

Thomas - cross

1 Q. He's the managing director of production, sales and  
2 marketing, you see that?

3 A. Yes.

4 Q. This is September 4, 2007, right?

5 A. Yes.

6 Q. In or around this period of time, this is right before the  
7 time that the High-Speed Swim Lane pilot is operating, correct?

8 A. Correct.

9 Q. It says managing director of sales. Right, you see that?

10 A. Yes.

11 Q. Sales are the account executives, correct?

12 A. Correct.

13 Q. That's what you called it at Countrywide, account  
14 executive, right?

15 A. Like loan officer. Somebody you would go to, to get a  
16 loan.

17 Q. If I want a loan in Countrywide at this point in time,  
18 there's an 800 number, right?

19 A. Yes.

20 Q. You pick up the phone, you call the 800 number, and an  
21 account executive picks up the phone, right?

22 A. That's correct.

23 Q. Says how can I help you, would you like a loan, or  
24 something to that effect?

25 A. Yes.

D9q3ban4

Thomas - cross

1 Q. I'm sure they worked off a script, right?

2 A. Probably.

3 Q. All those salespeople reported ultimately up to

4 Mr. Sergeant, correct?

5 A. That's correct.

6 Q. None of those salespeople, the people who the borrower  
7 talks to for the first time, reported through Rebecca Mairone,  
8 correct?

9 A. That's correct. At that time.

10 Q. Okay. Production. Production is different than sales,  
11 correct?

12 A. I would call it the same thing.

13 Q. Okay. So, at this point in time, it is true, is it not,  
14 the loan processors or loan specialists at this point in time  
15 reported up through Mr. Sergeant's organization, correct?

16 A. I believe that's correct. Before central fulfillment  
17 organization, I think that is true. Processers and salespeople  
18 were in the branches together, they reported up to the same  
19 people.

20 Q. Okay. Fair point. I'm talking about prior to central  
21 fulfillment. Let's be clear about that. Central fulfillment  
22 was another initiative within the company, correct?

23 A. It was a reorganization, yes.

24 Q. That reorganization went into effect after the High-Speed  
25 Swim Lane pilot, correct?

D9q3ban4

Thomas - cross

1 A. I can't remember the exact timing. My recollection is they  
2 were fairly close to each other. The intent was to use the  
3 High-Speed Swim Lane in the central fulfillment organization  
4 and so the organization was changed around that model.

5 Q. So, let me put a finer point on it then. Mr. Wade Comeaux  
6 ultimately was selected as the person to head the central  
7 fulfillment reorganization, correct?

8 A. That's my recollection, yes.

9 Q. Mr. Comeaux prior to that time lived in or worked out of  
10 the Pasadena office, right?

11 A. I don't recall, because I remember meeting with him a lot  
12 in Texas, so I thought he had a Texas office.

13 Q. He was relocated though to Texas at some point?

14 A. That may be true.

15 Q. Was this in connection with central fulfillment?

16 A. Yes.

17 Q. You don't know when he uprooted from California and moved  
18 to Texas to take on that role?

19 A. I don't.

20 Q. That was the part of the process of the rollout of the  
21 central fulfillment to move people around, around the concept  
22 of the central fulfillment, right?

23 A. Sure. I'm not sure if he started that role when he was in  
24 California and then moved, or you know, if it was exactly when  
25 he started in that position.

D9q3ban4

Thomas - cross

1 Q. Let's put aside Mr. Comeaux for a second. As part of the  
2 restructuring, people were moved around the company, correct?

3 A. In different roles and things? Yes.

4 Q. Yes?

5 A. Yes.

6 Q. And in different locations as well, correct?

7 A. Could be.

8 Q. You could have a loan specialist who worked on the fifth  
9 floor who was then moved to a central fulfillment team on the  
10 fourth floor, correct?

11 A. That could be, yes.

12 Q. Well, you worked out of Richardson, Texas. About this time  
13 were people moving cubicles?

14 A. We were always moving cubicles, even without  
15 reorganizations.

16 Q. At this point in time, the loan specialists reported  
17 through Mr. Sergeant, correct?

18 A. Yes. Pre-central fulfillment, that's correct.

19 Q. During July when you were studying the concept of the  
20 High-Speed Swim Lane, the loan specialists reported up through  
21 Mr. Sergeant, correct?

22 A. That's correct.

23 Q. During the pilot in August and September, prior to central  
24 fulfillment, the loan specialists reported up through  
25 Mr. Sergeant, correct?

D9q3ban4

Thomas - cross

1 A. Yes. Whenever -- until whenever the central fulfillment  
2 rolled out.

3 Q. Let's move to the next column if you will. This is  
4 Mr. Kucma, correct?

5 A. Correct.

6 Q. He was the managing director as well?

7 A. Correct.

8 Q. He was basically responsible for reporting the finances of  
9 the division, right?

10 A. Correct. He had previously been the chief operating  
11 officer before Rebecca joined.

12 Q. I think you testified yesterday that operations was  
13 responsible for production. Did you say that?

14 A. I'm -- I may have.

15 Q. But at this point in time, at the time the High-Speed Swim  
16 Lane production reported through Mr. Sergeant and not  
17 Ms. Mairone?

18 A. The processors themselves reported up through Lloyd. The  
19 operations support group, which supported the processors and  
20 did the process design for the processors and other technology,  
21 other components operations support reported up through  
22 Rebecca.

23 Q. That was a support role for Mr. Sergeant's organization in  
24 production, is that right?

25 A. I think that's fair.



D9q3ban4

Thomas - cross

1 Q. Let's go to Ms. Mairone's responsibilities. That's a  
2 pretty long list of things she was responsible for, would you  
3 agree?

4 A. Yeah, it's -- seems like a chief operating officer's role.

5 Q. So, underneath Ms. Mairone there is a woman by the name of  
6 Whitney Shelley, correct?

7 A. Correct.

8 Q. She was the executive vice president of HR. That's human  
9 resources?

10 A. That's correct.

11 Q. There is Robert Phelps, EVP of technology, right?

12 A. Correct.

13 Q. He was responsible for all the technology, right?

14 A. That's correct.

15 Q. Let me ask you something about technology. We've talked  
16 about CLUES and we've talked about Edge, we've talked about  
17 virtual loan file. These are all computer programs, right?

18 A. Yes.

19 Q. Pipeline manager, that's another one we'll talk about,  
20 right? That's a computer program?

21 A. Yes.

22 Q. And the GSE's loan guidelines, for example, are built into  
23 the CLUES process, right, the CLUES computer system?

24 MR. CORDARO: Objection.

25 THE COURT: Sustained.

D9q3ban4

Thomas - cross

1 Q. What is your understanding, Mr. Thomas, about how the GSE's  
2 loan guidelines are written into the computer programs at Full  
3 Spectrum Lending?

4 A. So, my understanding is there would be certain business  
5 rules that would use the guidelines for Fannie or Freddie, so  
6 it may have certain guidelines and they would turn it into  
7 business rules and put that into CLUES.

8 Q. So when you say a business rule --

9 A. Yeah.

10 Q. Would that be an algorithm in the computer process?

11 A. It basically would say something like, you know, if the  
12 income is between these levels, then you know it is acceptable.  
13 Or if it's outside of these levels, it's referred. That kind  
14 of thing.

15 Q. Those Fannie and Freddie guidelines are built into the  
16 CLUES system, is that right?

17 A. Yeah. I think that's one of the things that would be  
18 booked in.

19 Q. One of Mr. Phelps's responsibilities, who reported to  
20 Ms. Mairone, was to make sure that the Fannie and Freddie  
21 guidelines were appropriately built into the CLUES system?

22 MR. CORDARO: Objection.

23 THE COURT: Sustained.

24 Q. Next we've got Mr. Rodriguez. That says EVP of operations,  
25 do you see that?

D9q3ban4

Thomas - cross

1 A. Yes.

2 Q. At this point in time, Mr. Rodriguez reported to  
3 Ms. Mairone, correct?

4 A. That's correct.

5 Q. Is it your understanding that as of central fulfillment his  
6 reporting obligations changed and he reported to Mr. Kitashima?

7 A. I don't recall that. But I don't recall the work chart  
8 specifically after central fulfillment.

9 Q. Then we've got a whole bunch of different other people who  
10 are listed. We've got Patricia Maguire-Feltch and other  
11 operations, and we've got process engineering and programs.

12 I think that you testified when you were at Washington  
13 Mutual you worked on process engineering as well, correct?

14 A. Yes.

15 Q. So give the jury a sense of what process engineering is.

16 A. In the general sense, and I don't remember Richard Lang in  
17 this role. In a general sense, process engineering is looking  
18 at processes to see either to design them, or to improve them,  
19 that kind of thing.

20 Q. At Full Spectrum Lending, can you give us an example of a  
21 process engineering design that was for the purpose of  
22 improving things as you testified?

23 A. It could be different examples. You could look at the  
24 processing operation and/or the process and determine if  
25 something needed to be changed or -- I'm not sure what

D9q3ban4

Thomas - cross

1 Mr. Lang -- his responsibilities were.

2 Q. Mr. Barnett, who we talked about, was a process engineer as  
3 well, correct?

4 A. Correct, yes.

5 Q. Lent his skill set to the High-Speed Swim Lane design team,  
6 correct?

7 A. Yes, that's what he worked on, yes.

8 Q. So, what was his role as a process engineer in connection  
9 with the High-Speed Swim Lane?

10 A. So, for Loren, he, he did basically -- I call it project  
11 management facilitation. So, he would do -- the work flow, get  
12 feedback from folks and, you know, plan out the project  
13 timeline, those kinds of project management functions.

14 Q. We'll get to that. Let me see if I can understand it.  
15 When you say get people together. Do you mean calling  
16 meetings?

17 A. Yes.

18 Q. When you say putting together timelines, do you mean we  
19 need to get something done the first two weeks of August and  
20 the first two weeks of September, mapping out the project?

21 A. Correct.

22 Q. It was Mr. Barnett and Mr. Rodriguez's role was to get all  
23 the people together to talk about High-Speed Swim Lane, right?

24 A. That was one of the functions, yes.

25 Q. And you also talked about subject matter experts, right?

D9q3ban4

Thomas - cross

1 A. Yes.

2 Q. I think you testified that you were a subject matter  
3 expert?

4 A. Yes.

5 Q. In connection with the High-Speed Swim Lane, Mr. Rodriguez  
6 and Mr. Barnett got all the subject matter experts that were  
7 necessary to design the new process, correct?

8 A. They would, yes.

9 Q. And the subject matter experts that dealt with credit  
10 quality in the High-Speed Swim Lane came out of Mr. Kitashima's  
11 organization, correct?

12 A. That would be correct.

13 Q. So, Mr. Rodriguez and Mr. Barnett, when they were  
14 organizing meetings, included people from Mr. Kitashima's  
15 organization like yourself, Mr. O'Donnell, Mr. Brent,  
16 Mr. Aliano, Mr. Jaraba. The key people who were in place to  
17 look out for credit quality were included in those meetings,  
18 correct?

19 A. Yes. Our job was to raise the concerns that we saw from a  
20 credit quality standpoint.

21 Q. And give input into the process, right?

22 A. Sure.

23 Q. And raise concerns as you said, right?

24 A. Yes.

25 Q. You weren't excluded from that process, were you?

D9q3ban4

Thomas - cross

1 A. At the beginning, I was not.

2 MR. HEFTER: Your Honor, if I can approach and hand  
3 the witness DX 4014. Another 4,000 number.

4 THE COURT: Ladies and gentlemen, by the way, I should  
5 let you know that all the exhibits will be brought to you at  
6 the start of your deliberations so you'll have them all there.  
7 I'm also, since I think we may need several large vans to  
8 deliver them all to you, I'm going to ask counsel to prepare  
9 indices so you can find what you want quickly. Go ahead.

10 MR. HEFTER: Thank you, your Honor.

11 Q. Mr. Thomas, have you seen DX 4014 before?

12 A. I recall some slides in here. I probably did see this at  
13 some point.

14 Q. This is a slide deck that was prepared at Countrywide FSL  
15 during July 2007 timeframe?

16 A. It appears so.

17 MR. HEFTER: We offer it into evidence, your Honor.

18 MR. CORDARO: No objection, your Honor.

19 THE COURT: Received.

20 (Defendant's Exhibit 4014 received in evidence)

21 Q. If you just blow up the first page and the little note  
22 below. Thank you.

23 Mr. Thomas, this document's titled "Prime High-Speed  
24 Swim Lane Design Review July 26, 2007." You see that?

25 A. I do.

D9q3ban4

Thomas - cross

1 Q. Again, this is a slide deck. At the bottom, it says "I  
2 made the font type consistent with the rest of the  
3 presentation." Do you see that?

4 A. I do.

5 Q. I want to ask you a general question about that. You're  
6 familiar with the way slide decks work because you prepared  
7 some yourself, right?

8 A. I have.

9 Q. Computer program allows the presenter of the material to  
10 make notes to himself or herself when they present the slide  
11 deck, correct?

12 A. You can use a notes view to create notes.

13 Q. Is it your understanding that the note below is a note that  
14 someone would make to themselves about the presentation they were  
15 making?

16 A. It could be to themselves or it could be to somebody  
17 reviewing or editing the document.

18 Q. I think yesterday the government showed you another slide  
19 deck and was reading from the notes, do you recall that?

20 A. I sort of recall that, yes.

21 Q. So, when it says "I made the font type consistent with the  
22 rest of the presentation," was that your words?

23 A. I can't tell if that's -- this is me or not.

24 Q. Do you know who that was?

25 A. I don't. I'm looking through to see. But I don't see any

D9q3ban4

Thomas - cross

1 identification of who it might be.

2 Q. Seven years later it's hard to recall, right?

3 MR. CORDARO: Objection.

4 MR. HEFTER: Your Honor, I believe there was an  
5 objection.

6 THE COURT: I didn't hear it. Forgive me.

7 MR. HEFTER: I'll withdraw the question, your Honor.

8 Q. If you look at page one of the document. If you can blow  
9 up just the top portion. It says "design session held  
10 July 19," do you see that?

11 A. I do.

12 Q. It says Rebecca, Lloyd, Cliff, Loren, Cheri, Jim K, Ed,  
13 Rick Lang, Jim M, Patrick A, Anson, Chris Baumer, Mark,  
14 facilitating, do you see that?

15 A. Yes.

16 Q. That was Mark Barnett who was facilitating the meeting, is  
17 that correct?

18 A. That's correct.

19 Q. Were you at this meeting?

20 A. I don't recall if I was at this meeting. It doesn't look  
21 like I was, given the list.

22 Q. You wouldn't think Mr. Barnett would exclude you from the  
23 list?

24 A. It depends on what --

25 MR. CORDARO: Objection.



D9q3ban4

Thomas - cross

1 A. -- you know, what stage this meeting was. It could have  
2 been a meeting -- these were executives in the meeting. I may  
3 have not either been there, or this also looked like all people  
4 who may have been at Pasadena at the time. I'm just not sure.

5 Q. Fair enough. Do you know if you were in Pasadena or  
6 Richardson, Texas on July 19, 2007?

7 A. I was in Texas. I don't know -- I lived in Texas. I don't  
8 know -- I did travel to Pasadena sometimes.

9 Q. This list indicates that Ms. Mairone, Mr. Sergeant,  
10 Mr. Kitashima, Mr. Rodriguez, Ms. Shine, Jim K -- who is Jim K?

11 A. Jim Kee.

12 Q. What was his role?

13 A. I believe at the time he was support for the sales  
14 organization.

15 Q. So he was a sales guy. Rick Lang, he was a process  
16 engineer based on the chart, right?

17 A. Yeah, I just don't remember him at all.

18 Q. Jim M?

19 A. I don't know who that might be.

20 Q. Patrick A is Patrick Aliano, correct?

21 A. Probably, yes.

22 Q. Anson Gong?

23 A. Yes.

24 Q. You talked about him yesterday. So, you had Mr. Kitashima  
25 and Mr. O'Donnell and Mr. Aliano from the risk team at this

D9q3ban4

Thomas - cross

1 meeting, correct?

2 A. Correct.

3 Q. You had operations people, correct?

4 A. Yeah. I wouldn't say I had them. I don't know if I was  
5 even there. But yes, they were there.

6 Q. You have the sales team executives as well, correct?

7 A. The sales, yes.

8 Q. This is a collaborative process where the design session  
9 meeting was held on July 19?

10 A. It appears there were several people there for that, yes.

11 Q. In fact, throughout the entire time of studying the  
12 High-Speed Swim Lane, it was a collaborative effort from people  
13 from operations, from production and sales, and from  
14 underwriting and credit quality, correct?

15 A. I wouldn't say for the entire -- for myself personally, I  
16 wouldn't say for the entire time. I was much more involved at  
17 the beginning, but I remember not really being invited to some  
18 of the later meetings after I had raised some objections.

19 Q. I think you testified yesterday that you don't know, for  
20 example, with respect to quality of grade, you didn't know who  
21 the ultimate decisionmaker was with respect to that, correct?

22 A. The actual individual, no. The department would have been  
23 like Steve Brent's department. Somebody in that quality  
24 control compliance.

25 Q. That was not an organization that reported to Ms. Mairone,

D9q3ban4

Thomas - cross

1 correct?

2 A. No.

3 Q. So you don't know, standing here today, one way or the  
4 other, whether with respect to the quality of grade temporary  
5 suspension, whether Mr. Lumsden made the ultimate decision or  
6 Mr. Kitashima made the ultimate decision, or whether  
7 Mr. Sergeant made the ultimate decision or anybody else,  
8 correct?

9 A. I don't know who made the ultimate decisions. I know that  
10 Rebecca requested as part of the operations dealing with the  
11 central fulfillment operations. But I don't know who had to  
12 approve it or how that worked.

13 Q. Is it your testimony that you were in a meeting where  
14 Ms. Mairone requested that?

15 A. I don't remember the specific meetings. I know we  
16 discussed even in the pilot when we discussed kind of the fear  
17 of making the decisions and, you know, the quality hits, and I  
18 think I testified to the kickoff meeting. But, other than  
19 those, I don't remember a specific directive or anything.

20 Q. In fact, you weren't in all the meetings relating to  
21 High-Speed Swim Lane, correct?

22 A. No.

23 Q. You weren't in the meetings between Ms. Mairone  
24 Mr. Lumsden, Mr. Kitashima regarding the High-Speed Swim Lane,  
25 correct?

D9q3ban4

Thomas - cross

1 A. I'm sure they had some meetings where I wasn't involved.

2 Q. You weren't in the meetings with Mr. Mairone, Mr. Lumsden,  
3 Mr. Kitashima and others relating to central fulfillment,  
4 correct?

5 A. No, I wouldn't have been in every meeting.

6 Q. That wasn't at your level, correct?

7 A. It depends on what was talked about. But I'm sure the  
8 executives had meetings where I wasn't included.

9 Q. Well, in fact, you were never on their level, correct?

10 A. On their --

11 Q. On their level in the organizational chart?

12 A. I was never a managing director. I think my highest title  
13 before I left was senior vice president.

14 Q. Let's turn to Plaintiff's Exhibit 19, which I think is in  
15 your binder that was provided to you by the government.

16 MR. HEFTER: Your Honor, I believe it's already in  
17 evidence.

18 A. You said 19?

19 Q. Yes.

20 A. Okay.

21 Q. Could you turn to page seven. I'm sorry. Yes. Page  
22 seven. And blow up the note at the bottom, please. It says in  
23 the bottom "This project has broad scope and impact and an  
24 aggressive timeline." Do you see that?

25 A. Yes.

D9q3ban4

Thomas - cross

1 Q. In fact the government asked you questions about that  
2 yesterday, right?

3 A. I believe so.

4 Q. Let's turn now to the first page of the exhibit. Or the  
5 second page of the exhibit. Go to the top. This is a page  
6 that the government didn't show you. "Design objective." Do  
7 you see that?

8 A. I do.

9 Q. It says "Develop prime High-Speed Swim Lane with minimum  
10 set of gates as requirements for loans in this lane." Correct?

11 A. Yes.

12 Q. So the concept and the intent here was that only loans that  
13 were eligible for the High-Speed Swim Lane could enter it,  
14 correct?

15 MR. CORDARO: Objection.

16 THE COURT: Sustained.

17 Q. Was it your understanding that the design and intent of the  
18 High-Speed Swim Lane was that only loans that met the  
19 requirements were eligible for the High-Speed Swim Lane?

20 MR. CORDARO: Objection.

21 THE COURT: Ground?

22 MR. CORDARO: Your Honor, the phrase "the  
23 requirements." I don't know which requirements.

24 THE COURT: All right. Sustained. Do you want to  
25 clarify.

D9q3ban4

Thomas - cross

1 MR. HEFTER: Yes.

2 Q. Was it your understanding, Mr. Thomas, that the intent and  
3 concept of the High-Speed Swim Lane was that only certain  
4 eligible loans would enter it?

5 A. So, the design of the process was designed for specific  
6 loan types. Those loan types changed over time, but, yeah only  
7 loans that were designed to go through the process, were  
8 designed to go through the process.

9 Q. Right. And it says here "The design objective was target  
10 efficiency, velocity and quality." Do you see that?

11 A. I do.

12 Q. That was your understanding of the design objectives,  
13 correct?

14 A. Yes, in -- that was -- I would have specifically been  
15 concerned about the quality side.

16 Q. That was your understanding of the design objective at the  
17 start of the High-Speed Swim Lane, correct?

18 A. Yes, that's my understanding.

19 Q. If you go down and it says "Prime CLUES accepts," do you  
20 see that?

21 A. I do.

22 Q. Then it says "FICO 660." You see that?

23 A. Yes.

24 Q. It might say 860, I'm being reminded here. You can barely  
25 read it so I apologize. Then it says "CLTV less than

D9q3ban4

Thomas - cross

1 90 percent." Do you see that?

2 A. Yes.

3 Q. Can you explain what CLTV means to the jury.

4 A. So CLTV or LTV stands for loan to value. So, meaning if a  
5 property is worth \$100,000 and the loan is \$80,000, it would  
6 have a loan to value of 80 percent.

7 Q. Loan to value was one metric to determine the relative risk  
8 of a loan, correct?

9 A. It was one characteristic, yes.

10 Q. If you had a loan to value of less than 80 percent, that  
11 would be relatively a safer loan than an LTV of 120 percent,  
12 correct?

13 A. That's correct. Because if the bank or the mortgage lender  
14 ended up having to take the property from the borrower, you're  
15 more likely to recover your losses or more of your losses if  
16 the property is worth more than what's owed on the property.

17 MR. HEFTER: Thank you. Let's turn our attention to  
18 DX 193, which I believe is in evidence, your Honor. If I may  
19 have an assist from bank's counsel as to what tab that is in  
20 your binder.

21 Q. Tab three, sir.

22 A. Okay.

23 Q. Mr. Sullivan asked you some questions about this document.  
24 I just want to turn your attention to page four of the document  
25 at the top.

D9q3ban4

Thomas - cross

1 A. Okay.

2 Q. It says "Lloyd's approach."

3 A. Yes.

4 Q. This is your attempt to put down in writing your notes from  
5 the design meeting, correct?

6 A. That's correct.

7 Q. Then you distributed it to the people who were involved in  
8 the process, correct?

9 A. I believe so, yes.

10 Q. This is a meeting that occurred on or about July 18, 2007?

11 A. Probably, yes.

12 Q. This is an e-mail you did not send to Ms. Mairone, correct?

13 A. No, I sent this to Loren who reported to Rebecca.

14 Q. In fact, Ms. Mairone was not at this design meeting,  
15 correct?

16 A. I imagine she -- I don't know for sure, but I imagine she  
17 would not be. This looked more like a process level, so more  
18 subject matter experts.

19 Q. This is a collection of subject matter experts, correct?

20 This is your attempt to put this in writing, put the notes in  
21 writing. It says at the top "Lloyd's approach no file goes  
22 backward, just to the side for specialized exception  
23 processing." Do you see that?

24 A. I do.

25 Q. Is it your recollection sitting here today that



D9q3ban4

Thomas - cross

1 Mr. Sergeant managing director's approach was that no files go  
2 backward, just to the side for specialized exception  
3 processing? Do you see that?

4 A. I see it, yes.

5 Q. That was discussed at this design meeting with the subject  
6 matter expert, right?

7 A. It appears so.

8 Q. It says "No file goes backward, just to the side for  
9 specialized exception processing."

10 Was it your understanding in the High-Speed Swim Lane  
11 if there was something about the loan that it could not move  
12 forward, it would go off the High-Speed Swim Lane and on to a  
13 different process?

14 A. Not a different process, the -- I think when we were  
15 flipping through one of the presentations I saw a slide we  
16 showed kind of a road, loans move forward never backwards, but  
17 they could take a pit stop. That was the analogy. The concept  
18 was don't send it back to somebody else, but fix whatever it is  
19 and keep moving it forward.

20 Q. It wasn't if there was a problem or an issue, ram it  
21 through. That was not the concept of the design, right?

22 A. In the design, no. That wouldn't have been a design  
23 concept.

24 Q. In fact --

25 A. It may have been an implementation problem. You may see

D9q3ban4

Thomas - cross

1 that, but I don't think we would design that.

2 Q. But the concept of Mr. Sergeant's approach of no files go  
3 backward, just to the side. If there was an issue, it had to  
4 be placed on the side before it could move forward in the  
5 process to funding, correct?

6 A. I can't say in the actual process. In the design, because  
7 I don't remember even how we identified pit stops or anything  
8 like that. But, I do remember discussing that concept in the  
9 design phase.

10 Q. I think that was my question, sir. In the design.

11 A. Okay.

12 Q. It was intended that if there was an issue with the loan,  
13 it would be moved to the side, it wouldn't move forward until  
14 that issue was resolved, correct?

15 A. At this point in the design I believe that's correct.

16 Q. Thank you. In fact, to determine that the loan got a prime  
17 CLUES accept, that was not eligible or did not meet the  
18 eligibility criteria for the High-Speed Swim Lane, it would  
19 need to be put to the side for different treatment, correct?

20 A. I would say if it didn't meet the eligibility requirement  
21 it wouldn't -- it wouldn't step aside, it would actually go to  
22 a different process.

23 Q. If it didn't meet the eligibility criteria, it was  
24 ineligible for the High-Speed Swim Lane, and had to go to a  
25 different process all together?

D9q3ban4

Thomas - cross

1 A. It should, yes.

2 Q. Thank you.

3 MR. HEFTER: Your Honor, may I approach to show the  
4 witness DX 4001.

5 THE COURT: Yes.

6 Q. Sir, before we go there just go back to the previous  
7 document. DX 193.

8 A. Which was that?

9 Q. Tab three.

10 A. Okay.

11 Q. If you go to the back, there is an e-mail from you to  
12 Mr. Rodriguez. Do you see that?

13 A. Yes.

14 Q. July 18, around 11:18 a.m.?

15 A. Yes.

16 Q. You write "Loren, Ed asked me to collect our brainstorm  
17 thoughts for process improvements and send to you before  
18 tomorrow's meeting." Do you see that?

19 A. I do.

20 Q. Do you recall Mr. O'Donnell asking you to collect our  
21 brainstorm thoughts for process improvement?

22 A. I assume he did from reading the e-mail.

23 Q. That was something that Mr. O'Donnell had asked you to do  
24 during this process to get involved and lend your subject  
25 matter expertise for subject approval, right?

D9q3ban4

Thomas - cross

1 A. Yes.

2 Q. Now turn to DX 4001 and let me ask you, this is an e-mail  
3 exchange between you and Mr. O'Donnell, you see that?

4 A. Yes.

5 Q. Do you recall these e-mails between you and Mr. O'Donnell?

6 A. Not specifically, but I see them here.

7 Q. You have no reason to believe that you didn't send or  
8 receive these e-mails?

9 A. No.

10 MR. HEFTER: We move DX 4001 into evidence, your  
11 Honor.

12 MR. CORDARO: No objection.

13 THE COURT: Received.

14 (Defendant's Exhibit 4001 received in evidence)

15 THE COURT: Counsel, how much longer are you going to  
16 go?

17 MR. HEFTER: I probably have 20 minutes, your Honor.

18 THE COURT: Come to the side bar.

19 (Continued on next page)

20

21

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23

24

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D9q3ban4

Thomas - cross

1 (At the side bar)

2 THE COURT: When I asked yesterday, you said a half  
3 hour. That was I understand a ballpark analysis. But in 20  
4 minutes you'll have gone over an hour. I will not allow this  
5 to continue. I am going to let you have your 20 minutes, not  
6 21. From now on we will set specific time limits. I can't  
7 have counsel being that far off on their predictions.

8 MR. HEFTER: I apologize, your Honor. I appreciate  
9 that. Thank you very much.

10 (Continued on next page)

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25

D9QTBAN4

Thomas - cross

(In open court)

BY MR. HEFTER:

Q. Mr. Thomas, let me focus your attention on just the top portion just to give the jury a sense of the timing.

A. OK.

Q. Now this is an email from Mr. O'Donnell to yourself dated March 8, 2006. Do you see that?

A. Yes.

Q. Now let me turn your attention to the second page of the exhibit. Do you see that on the bottom?

A. OK.

Q. And on the bottom it says this is an email from you to Mr. O'Donnell on March 8, 2006. Do you see that?

A. Yes.

Q. And it says on the bottom paragraph: I'm working on a plan and meeting with my staff this week to prioritize. Per meeting with Cliff on Friday, this is the only number one priority, so we'll be putting a lot of resources on it. Do you see that?

A. Yes.

Q. Do you know what you were referring to there?

A. I don't. From the timing it may have been the prime CLUES accept. Something around the prime CLUES accept process.

Q. And this is the beginning of March 2006, correct?

A. Correct.

Q. And this was an effort by you and Mr. O'Donnell and others

D9QTBAN4

Thomas - cross

1 to implement Mr. Lumsden's direction to have a new process for  
2 processing prime loans, correct?

3 A. This would have been what I discussed with the prime CLUES  
4 accept process, which was kind of separating those workloads  
5 for the underwriters.

6 Q. And this occurred back in March 2006, correct?

7 A. I can't remember -- this email did. I can't remember at  
8 what point we started doing some of the prime CLUES accept  
9 processing.

10 Q. And those discussions relating to separating out the  
11 workloads for prime loans that occurred prior to March 2006 as  
12 well, correct?

13 A. Probably. My recollection is the prime CLUES accept  
14 process was in 2006.

15 Q. Your recollection, based on this document, is prior to this  
16 time, March 8, 2006, you were having those discussions?

17 A. Correct. I would think so, because I'm talking about  
18 organizing a plan. I don't know exactly when the discussions  
19 were.

20 Q. I'm going to turn your attention to DX 1045, tab 12 in the  
21 binder. Tab 13, I apologize. You can go to the top.

22 A. Yes.

23 Q. This is -- Mr. Sullivan asked you questions about this in  
24 connection with the sprint incentive, correct?

25 A. Yes, I believe so.

D9QTBAN4

Thomas - cross

1 Q. Mr. Zavala was a person in the chief financial officer's  
2 organization, correct?

3 A. I think so. I didn't check on -- when we looked at it, but  
4 he was incentive compensation.

5 Q. And that was not Ms. Mairone's organization, correct?

6 A. I don't believe so, no.

7 Q. And in fact, Ms. Mairone had nothing to do with the sprint  
8 incentive and its design, correct?

9 A. I don't know if there were any discussions with Rebecca on  
10 it, but it was -- the employees that it affected were not in  
11 her organization.

12 Q. Let me turn your attention --

13 MR. HEFTER: Sorry, may I approach, your Honor?

14 THE COURT: Yes.

15 Q. I hand you, Mr. Thomas, Plaintiff's Exhibit 199, which is  
16 an email from you to Mr. O'Donnell, copied to Mr. Kitashima.  
17 Do you see that?

18 A. I do.

19 THE COURT: Is there a mistake? It's only three  
20 digits?

21 MR. HEFTER: I see that, your Honor.

22 Q. Did you send this email to Mr. O'Donnell on or about  
23 March 18?

24 A. March 13.

25 Q. 2008?



D9QTBAN4

Thomas - cross

1 A. March 13, 2008, yes, it appears so.

2 MR. HEFTER: We move Plaintiff's 199 into the  
3 evidence, your Honor.

4 MR. CORDARO: We have no objection to our exhibit.

5 THE COURT: Received.

6 (Plaintiff's Exhibit 199 received in evidence)

7 BY MR. HEFTER:

8 Q. So Mr. Thomas, let me see if I understand this, this is  
9 March 13, 2008, correct?

10 A. Correct.

11 Q. And you were putting together a presentation for a meeting  
12 between Mr. Lumsden and Mr. Gissinger, is that correct?

13 A. I believe I see in the email here where I said something  
14 about Drew being in the audience, so I assume -- I don't know  
15 if I put the whole deck together or parts together and  
16 finalized it.

17 Q. You are aware that Mr. Kitashima, Mr. O'Donnell,  
18 Ms. Mairone and Mr. Lumsden had a meeting with Mr. Gissinger on  
19 March 17, 2008. You are aware of that, correct?

20 A. I don't recall a specific meeting. I can't say it didn't  
21 happen, but I don't recall specifically.

22 Q. Putting aside whether there was a meeting or not,  
23 Mr. O'Donnell asked you to build a slide deck for him, correct?

24 A. Yes.

25 Q. Now I want to turn to your note on page 2 of the exhibit.

D9QTBAN4

Thomas - cross

1 Let me just blow up at the bottom. Sorry, in the middle it  
2 says -- why don't you read the first paragraph into the record.

3 A. The first paragraph. As I'm building the new slides, you  
4 may want to review the old slides. I think my wording is too  
5 negative for Drew to an audience. I went through and  
6 highlighted things to bring to Wade and Rebecca's attention,  
7 but we probably want to reword to be a little more positive on  
8 FSL. Do you agree?

9 Q. So it was your thought at the time that you wanted the  
10 presentation to be a little more positive on FSL for  
11 Mr. Gissinger, correct?

12 A. It appears that I may have thought some of the comments  
13 that I may have put in originally might be a little too  
14 controversial or harsh, I don't know.

15 Q. And you removed those slides, correct, the ones that you  
16 felt might have been too controversial or harsh, as you say?

17 A. It doesn't appear that I chose what slides to remove, it  
18 looks like, as I take a look, I removed the pages we identified  
19 to remove. So I don't know if I was told to remove certain  
20 slides or what that was, but I would have been building the  
21 deck so I would have done whatever was asked.

22 Q. At this point in time there's competition between the  
23 divisions, correct?

24 A. There was always competition between divisions.

25 Q. And you wanted FSL to be seen in the most positive light,

D9QTBAN4

Thomas - cross

1 correct?

2 A. Well, I think I probably thought that in any presentation  
3 with executive management you would want to highlight your  
4 strengths or look as good as you could, just like you would  
5 meeting with any boss.

6 Q. And you in fact did that by removing some slides and  
7 recommending that some slides be removed to Mr. O'Donnell?

8 A. It looks like I identified things to bring to Wade and  
9 Rebecca's attention. And I said, you may want to reword. I  
10 wouldn't be the one deciding how to word things or what slides  
11 to include.

12 Q. But that was going through your mind at the time, that you  
13 thought some slides should be removed to make FSL be seen in a  
14 more positive light?

15 MR. CORDARO: Objection, your Honor.

16 THE COURT: Sustained.

17 Q. Let me move on to Plaintiff's Exhibit 80, which is in the  
18 government's book. Do you see that? We talked about this  
19 document already.

20 A. Yes.

21 Q. And it says just talked to Cliff. He was just as  
22 frustrated. Brent said Rebecca rolled her eyes quite a bit  
23 when I confirmed that the issue was not a behavioral problem  
24 but process problem. Do you see that?

25 A. Yes.

D9QTBAN4

Thomas - cross

1 Q. And that was a debate that was going on in the division  
2 whether what was happening in the underwriting process, or  
3 issues with respect to that, were related to behavioral or  
4 people issues or something that was clogging the process,  
5 correct?

6 A. I wouldn't say underwriting, because this would have been  
7 the Hustle process, it was probably the processors' behavior.  
8 But my recollection is was it the whole concept, is the process  
9 broken, or is it just people are afraid to use the new  
10 authority.

11 Q. So you had a process, people and behavioral and technology,  
12 those were things that you were always looking at to see where  
13 you could make more efficiencies, correct?

14 A. Yes, I think we always have a combination of factors.

15 Q. Now at the bottom there's a little colon and a caret,  
16 that's a smiley face, right, that's what you testified to?

17 A. Yes, it is.

18 Q. So you were happy at the time that you got under -- or  
19 Mr. Brent got under Ms. Mairone's skin at that meeting,  
20 correct?

21 A. I think I was pleased that, one, that we at least got some  
22 concession on the process issues, that there with were process  
23 issues. And since I was not successful for a long period of  
24 time getting those concerns recognized, I was pleased.

25 Q. You were pleased that you got under her skin, correct?

D9QTBAN4

Thomas - cross

1 A. Because I think I was getting my point across.

2 Q. And at this point in time, central services had been  
3 effectively replaced, correct, by the central fulfillment  
4 model?

5 A. I believe so, yes.

6 Q. And you were in the central services --

7 A. I shouldn't say replaced, because for central fulfillment  
8 organization, yes, underwriting and funding were in central  
9 fulfillment, the branch organizations still used underwriting.

10 Q. Mr. Thomas, the central services where you previously  
11 reported up through had been replaced as a result of central  
12 fulfillment, is that correct?

13 A. Not entirely. The central fulfillment operations -- sorry,  
14 the central services operations for central fulfillment were  
15 now absorbed into central fulfillment. The central services  
16 organization to support the field operations still existed.

17 Q. But not with respect to the national sales centers,  
18 correct?

19 A. That's correct.

20 Q. And you wanted Mr. O'Donnell to have the position of having  
21 central fulfillment, correct?

22 A. I really didn't have an opinion one way or the other as  
23 long as I was still working for him.

24 Q. And you were upset when he didn't get --

25 A. I think my recollection at the time was that I thought that

D9QTBAN4

Thomas - cross

1 that was probably our best chance to get some quality back into  
2 the central process.

3 Q. You would have preferred Mr. O'Donnell to have that role  
4 instead of Mr. Comeaux?

5 A. I would have preferred Ed to have the role. I wouldn't say  
6 over Wade. I didn't know Wade, so -- until after that point.

7 MR. HEFTER: Pass the witness, your Honor.

8 THE COURT: All right. Any redirect?

9 MR. CORDARO: Yes, your Honor.

10 REDIRECT EXAMINATION

11 BY MR. CORDARO:

12 Q. Good afternoon, Mr. Thomas.

13 A. Good afternoon.

14 Q. Could you open the plaintiff's binder to Plaintiff's  
15 Exhibit 46, please.

16 A. OK.

17 Q. I would like to focus your attention on the third page of  
18 the exhibit.

19 A. OK.

20 Q. I will read you the line that I am interested in, I think  
21 it will sound familiar to you. The line is: Now that being  
22 said, I think the concept and intent behind the process is  
23 correct.

24 Do you see that line?

25 A. I do.

D9QTBAN4

Thomas - redirect

1 Q. You were asked a number of questions yesterday about the  
2 word "concept." Could you explain to us what you meant by  
3 "concept" in the context of this email?

4 A. So in the context of this email, I was saying I agree with  
5 improving efficiency, but I'm concerned about the quality,  
6 basically is what I was saying in that sentence.

7 Q. And was there only one concept, to your knowledge, with  
8 respect to the High-Speed Swim Lane?

9 A. No, there was a lot of concepts as part of that -- as part  
10 of the design and as part of the roll out and continuation,  
11 there were a lot of factors and concepts.

12 Q. And did you agree with all of the concepts in the design  
13 and the roll out?

14 A. No.

15 Q. Did could you tell us which concepts you disagreed with?

16 A. So especially as we started measuring the pilot and things,  
17 I disagreed with the concept of having the processor do some of  
18 the underwriting functions, because it didn't appear from the  
19 data they were comfortable with that. So things like that. I  
20 didn't agree with concept of removing job aids or certification  
21 check lists that were in the file. That was something that was  
22 kind of, in my mind, a minimum check, you wanted at least to  
23 say that they did the work.

24 Q. Did you agree with the concept of removing underwriters  
25 from the clear to close process?

D9QTBAN4

Thomas - redirect

1 A. No, I remember thinking in the design phase that that part  
2 of the process, having an underwriter check at the end, was  
3 important, and that wouldn't have caused a significant delay in  
4 the process because that's not where a lot of rework was.

5 Q. Mr. Thomas, you did testify that you believed in the  
6 concept of improving efficiency?

7 A. Yes.

8 Q. Did you believe in a concept of improving efficiency  
9 without any quality bounds?

10 MR. HEFTER: Objection.

11 THE COURT: Ground?

12 MR. HEFTER: Leading, your Honor.

13 THE COURT: Well, it is, but within limits on redirect  
14 I will allow it. Overruled.

15 A. Absolutely not. I didn't agree with improving efficiency  
16 at the expense of quality. That's what I was saying in that  
17 sentence.

18 Q. We were discussing the concept of clear to close. Could we  
19 just step back. In prime CLUES accept model, who handled the  
20 clear to close?

21 A. The underwriter.

22 Q. Was that an underwriting validator or an underwriter?

23 A. That was an underwriter. So the validator would have been  
24 earlier in the process validating the data in CLUES. The  
25 underwriter would have been a more senior underwriter.



D9QTBAN4

Thomas - redirect

1 Validators were usually more a junior underwriter. A more  
2 senior underwriter would go through the clear to close.  
3 Typically there were some more complex issues there around  
4 title and appraisal that you would want a more senior  
5 underwriter to look at.

6 Q. Could a loan fund with any conditions -- withdrawn.

7 Could a loan fund before it was cleared to close?

8 A. No.

9 Q. Why not?

10 A. An underwriter would have to clear to close before it could  
11 move into the funding organization.

12 Q. Now I believe you talked about the fact that there could be  
13 some complex conditions that the underwriter might have to deal  
14 with in making the clear to close decision.

15 A. Yes.

16 Q. Did I remember that accurately?

17 Did that change when the High-Speed Swim Lane was  
18 implemented with respect to clearing to close?

19 A. The complex conditions were still there, and that was part  
20 of the duties of the processor in the Hustle process.

21 Q. So with respect to the conditions themselves, did the  
22 complexity change from prime CLUES accept to the High-Speed  
23 Swim Lane?

24 A. No.

25 Q. But did who handles those conditions change between prime

D9QTBAN4

Thomas - redirect

1 CLUES accept and the High-Speed Swim Lane?

2 A. Yes.

3 Q. And the person handling the task of clearing to close in  
4 the High-Speed Swim Lane was?

5 A. The processor.

6 Q. The processor and underwriter?

7 A. No.

8 Q. Was the processor someone who received the training that  
9 underwriters received in the prime CLUES accept model?

10 A. In the prime CLUES accept model they were supposed to be  
11 required to do the training. I think we talked about that the  
12 certification was given even before some of the training was  
13 completed or the file reviewed.

14 Q. Certification for who?

15 A. For the processor in the Hustle process.

16 Q. Now you were speaking about the underwriting validator  
17 before the clear to close.

18 A. Yes.

19 Q. So let's go back prime CLUES accept for a second. If CLUES  
20 spat out an accept with conditions, who could work on the  
21 conditions putting aside the clear to close later?

22 A. Sure. So it depended on the type of condition. Some  
23 conditions the processor would collect documentation and they  
24 could actually sign off on those conditions saying they did,  
25 they collected those documents. Some we called underwriter doc

D9QTBAN4

Thomas - redirect

1 conditions, which meant the processor could collect the  
2 conditions but the underwriter needed to review the  
3 documentation, and they needed to sign off on it, and there  
4 were underwriting conditions that they may have been looking,  
5 interpreting something. And then there are even conditions in  
6 the funding organization as well if something had to be done  
7 before funding.

8 Q. Was that the underwriting validator in prime CLUES accept  
9 model or the underwriter?

10 A. Doing?

11 Q. Looking at the conditions before the clear to close.

12 A. Before the clear to close, looking at conditions would have  
13 been -- the ones the underwriter was responsible for would have  
14 been the underwriter, not the validator. The validator was  
15 validating CLUES input.

16 Q. So in prime CLUES accept, did the CLUES ever displace the  
17 presence of a human underwriter somewhere in that process?

18 A. No.

19 Q. And when you used the term "CLUES is the underwriter," what  
20 did you mean against that backdrop?

21 A. So that meant that the underwriter should not re-decision  
22 the rules that CLUES had decisioned. So don't second guess the  
23 rules that CLUES used. Still got to do the other parts of your  
24 job, validating the information, clearing the conditions, but  
25 CLUES rules were OK, you didn't have to reevaluate those rules.

D9QTBAN4

Thomas - redirect

1 Q. Did that have anything to do with clear to close?

2 A. No.

3 Q. Mr. Thomas, you were asked a number of questions yesterday  
4 about certain steps that would purportedly lead to a quality  
5 product. Do you remember those questions?

6 A. Yes.

7 Q. So I'm going to ask you a similar question. In prime CLUES  
8 accept, the process by which an underwriter would clear to  
9 close, what, if anything, would that have to do with producing  
10 a quality product?

11 A. If an underwriter was clearing to close?

12 Q. Yes.

13 A. They would be -- in the old process and the PCA process or  
14 before, they would be validating that all the conditions are  
15 cleared correctly and cleared to close or clearing conditions  
16 that they were supposed to clear, and that would mean that the  
17 underwriter was comfortable with that process.

18 Q. Why an underwriter? Why not someone else?

19 A. They're skilled at understanding the underwriting  
20 guidelines. They're more experienced employees. They just  
21 have the expertise to understand the quality, they're quality  
22 employees, their job is assessing risk.

23 Q. Who did the underwriters report to?

24 A. Ultimately Cliff Kitashima, the chief credit compliance  
25 officer.

D9QTBAN4

Thomas - redirect

1 Q. Was that the same reporting line as the loan specialists?

2 A. No.

3 Q. Stepping back to the question I just asked you, does that  
4 process have anything to do with producing a quality product?

5 A. Yes.

6 Q. Why?

7 A. When you have a separate organization responsible for the  
8 risk versus the organization that's responsible for the volume,  
9 that's a good back and forth, because one is incentivized on  
10 volume, one is incentivized on quality. So if one decides I  
11 want to push as much volume through, the other says wait a  
12 second, there's quality issues here. So you have somebody  
13 checking someone else's work, but they also report separately.  
14 And that guards against, among other things, fraud, because you  
15 have two entirely different organizations aligned to do that.

16 Q. What happened in that back and forth process in the  
17 High-Speed Swim Lane?

18 A. It was just one organization.

19 Q. And what do you mean by that?

20 A. Meaning the central fulfillment had a processor,  
21 underwriter, funder -- well, processing underwriting in one  
22 role, funder in a different role, funder compliance specialist  
23 combined in that role, and they reported up the same chain of  
24 command. They both would have the same manager.

25 Q. By the way, stepping back to the underwriting validator on

D9QTBAN4

Thomas - redirect

1 prime CLUES accept, you testified their task was to validate  
2 the information that went into CLUES, correct?

3 A. Correct.

4 Q. And was that an important job?

5 A. Yes, absolutely.

6 Q. Why?

7 A. Well, garbage in, garbage out. You could put whatever you  
8 want into CLUES, but if that information is not documented and  
9 correct, then you're going to get the wrong answer. So it's  
10 very important to have somebody else check that work. If I was  
11 putting information in CLUES and then also responsible for  
12 putting the documentation in the file, I wouldn't have to put  
13 that in the file, I could clear the condition saying I put it  
14 in the file. I could clear it to close. I could send it to  
15 funding.

16 Q. And what, if anything, did having independent eyes of the  
17 underwriting -- sorry, the underwriting validator, have to do  
18 with producing a quality product?

19 A. Because they could check somebody else's work and make sure  
20 it was correct.

21 Q. What happened to that work, checking by the second set of  
22 eyes in the High-Speed Swim Lane?

23 A. It didn't exist.

24 Q. By the second set of eyes I mean the underwriting  
25 validator, correct?

D9QTBAN4

Thomas - redirect

1 A. Correct.

2 THE COURT: Counsel, find a appropriate spot to break  
3 and we'll give the jury their lunch break.

4 MR. CORDARO: This is it, your Honor.

5 THE COURT: Very good, ladies and gentlemen, so we'll  
6 take our lunch break now and see you at 2 o'clock.

7 (Continued on next page)

D9QTBAN4

Thomas - redirect

1 (Jury not present)

2 THE COURT: Please be seated.

3 So as I explained to counsel at the side bar, because  
4 there had been a considerable deviation between the predicted  
5 time for the cross of the witness by Ms. Mairone's counsel and  
6 the actual time, I am going to start enforcing more strictly  
7 when counsel tells me is their time frame.

8 So let me ask the government, how much longer do you  
9 have on redirect?

10 MR. CORDARO: Your Honor, I would hope to wrap this up  
11 in 40 minutes. I need to study the documents over lunch and  
12 see what I have. I understand this witness has been on the  
13 stand for a while.

14 THE COURT: If it's more than 40 minutes, you let me  
15 know before we start at 2 o'clock.

16 MR. CORDARO: Thank you, your Honor, I appreciate it.

17 THE COURT: And I don't anticipate that there will be  
18 more than a very few minutes of recross, but we'll see what  
19 happens.

20 Who is the next witness?

21 MS. NAWADAY: Edward O'Donnell.

22 THE COURT: And how long will he be on direct?

23 MS. NAWADAY: We estimate approximately four hours,  
24 your Honor.

25 THE COURT: OK. I would estimate that's the most



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Thomas - redirect

1 you're going to get.

2 MS. NAWADAY: Understood, your Honor.

3 THE COURT: Now there were other matters counsel  
4 wanted to raise with the Court?

5 MR. MUKASEY: Judge, this is sort of an end of the day  
6 matter, but I want to plant the seed in your Honor's mind  
7 now. There is a rather prominent article in the Wall Street  
8 Journal today that is entitled "The Star of the Hustle," and  
9 it's got a big picture of Ms. Mairone. And it's an article  
10 that contains allegations from the government's complaint, a  
11 little bit about the testimony yesterday. I don't want your  
12 Honor obviously to tell the jury not to think about the pink  
13 elephant in the room and force them to think about the pink  
14 elephant, I'm wondering -- and I defer to the Court in terms of  
15 process -- perhaps when you dismiss them at the end of the day,  
16 casually you might say: I remind you to --

17 THE COURT: That sounds fine. Must not have been  
18 quite as prominent as you think since I get the Wall Street  
19 Journal and I didn't see it, but maybe it was in a later  
20 edition or something like that.

21 MR. MUKASEY: When you're the subject of it, it's  
22 always prominent.

23 THE COURT: Let me make a note to remind the jury.  
24 Anything else?

25 MS. MAINIGI: Your Honor, we mentioned to your law

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Thomas - redirect

1 clerk this morning that we were determining whether there could  
2 be an earlier resolution of that still-pending motion in limine  
3 related to Cindy Simantel. I think, your Honor, you saw it  
4 arise during summary judgment. It has to do with the eleven  
5 loans what were subprime loans that were not out of FSL but  
6 were out of a different division all together.

7 And the reason -- I completely understand why your  
8 Honor held it, as you did, with the motion in limine. The  
9 reason it has become more timely issue is the government had  
10 put Cindy Simantel on their witness list. We did not put her  
11 on the witness list. She may be the only one that we did not  
12 intend to bring to this case. But the government has issue  
13 indicated that if in fact the motion in limine is granted, they  
14 may possibly not bring Ms. Simantel live, so if they are not  
15 allowed to bring in that particular document, they may chose to  
16 not bring in Ms. Simantel.

17 I was wondering, it doesn't have to be right now, but  
18 whether there could be a time set aside prior to the early part  
19 of the next week where we could have that discussion.

20 THE COURT: Why do you care? I could see why she  
21 might care and why the government might care. Why do you care?

22 MS. MAINIGI: She would be coming across the country,  
23 your Honor, from California to come here, and we feel that that  
24 document itself is fairly prejudicial.

25 THE COURT: I know all that.

D9QTBAN4

Thomas - redirect

1 MS. MAINIGI: It's irrelevant.

2 THE COURT: I'm not understanding why you think -- I  
3 understand why she might not want to come across the country to  
4 testify and then learn that it was unnecessary, but I'm not  
5 understanding what your concern is.

6 MS. MAINIGI: Well, your Honor, I think as a practical  
7 matter that email is an issue unto itself, so I think for both  
8 sides there will be a completely different approach with  
9 Ms. Simantel if the email is in or the email is out. I know  
10 your Honor's general rule is if there's a particular document  
11 or witness that has an issue that you prefer to deal with it at  
12 that time. If that's what you choose to do, that's fine. I  
13 think with this particular email it may even determine whether  
14 she needs to come out at all.

15 THE COURT: I understand that, but I'm still not sure  
16 why that affects you. Is it because you would otherwise have  
17 to prepare for her like the government will have to prepare for  
18 all your witnesses, some of whom may not be called, or is it  
19 because you would like to narrow the government's list of  
20 witnesses, much as the government would like to narrow your  
21 quite extensive list of witnesses? You see my point.

22 MS. MAINIGI: I do. And with all due respect, in our  
23 view it's a different situation, your Honor, it's a very  
24 discrete issue. And I think both parties would benefit from  
25 knowing whether that issue was in or whether it was out. If

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Thomas - redirect

1 your Honor prefers to bring her here, we can certainly proceed  
2 in that way, but if it made sense at some point prior to the  
3 early part of next week to deal with it, I actually think it  
4 would be more efficient for both sides to know that.

5 THE COURT: I will take that under consideration.  
6 Thank you.

7 MS. MAINIGI: Thank you. One other matter, your  
8 Honor, we would like to seek leave to file a short motion with  
9 your chambers regarding the issue of the \$165 million that was  
10 referenced in the opening statement.

11 THE COURT: Yeah.

12 MS. MAINIGI: And we would like to move to exclude it.

13 THE COURT: Why? What ground? Mr. Sullivan objected  
14 at the time. I considered the matter and overruled his  
15 objection. But what is your ground?

16 MS. MAINIGI: There are two grounds, your Honor, the  
17 165 number is essentially a back door number for damages. The  
18 165 million refers to the pecuniary gain. And it's referenced  
19 actually in the penalties section of the government's joint  
20 pretrial statement, their section of that. So the 165 million,  
21 just as all the other damages numbers, is very much a damages  
22 number. And while it might be stated in the form of a gain as  
23 opposed to a loss, it is still a damages number, and --

24 THE COURT: No, I think you're missing the point. The  
25 government has to prove that misrepresentations were made for

D9QTBAN4

Thomas - redirect

1 the purpose of obtaining money or property, and there may be,  
2 although we need to discuss this perhaps more, a question of  
3 materiality and things like that of representations. So it  
4 seems to me that the fact that they obtained this property,  
5 namely this money, is part of their proof of that element of  
6 the offense.

7 MS. MAINIGI: Your Honor, if we could have the  
8 opportunity to brief the issue, we respectfully disagree.

9 THE COURT: Of course I'm delighted to have you brief  
10 the issue. I was extremely worried that now that the Yankees  
11 are out of the playoffs I would have absolutely nothing to do  
12 this weekend, so this will brighten my day. When would you  
13 like to put in that brief?

14 MS. MAINIGI: We could do it later today.

15 THE COURT: That's fine. If the government wants to  
16 respond, you will let me know when you want to respond by, but  
17 certainly no later than Monday at the latest.

18 MR. ARMAND: Your Honor, would it be possible to  
19 resolve it orally and without having to do briefing? This  
20 seems like a pretty straightforward issue.

21 THE COURT: I never forbid a party from putting in a  
22 written brief, provided, of course, that they ask for  
23 permission in advance, because they need to make their record  
24 for any appeal and things like that, and written briefs can do  
25 that with more particularization and nuance than an oral

D9QTBAN4

Thomas - redirect

1 presentation. But having said that, let me hear from you if  
2 you wanted to say anything on the subject now.

3 MR. ARMAND: Well, just that with regard to the 165  
4 million, it's from the bank's own financial records. It shows  
5 the profit motive that is part of the mail and wire fraud claim  
6 that we have brought. And so without --

7 THE COURT: I think that's a fair point, too. Motive  
8 is certainly relevant. As you can tell from the fact that I  
9 overruled Mr. Sullivan's objection at the time, I am inclined  
10 to think that it should come in, but I'm not going to forbid  
11 them from putting in a brief. And if you feel, after reading  
12 their brief, that you can respond to it purely orally, I'm not  
13 going to force you to put in a brief in response.

14 My law clerk, who is much, much tougher than I am, and  
15 thank God, says -- he just handed me a note, "Do you want to  
16 limit it to three pages?"

17 MR. ARMAND: That was -- my next question was going to  
18 be page limit.

19 THE COURT: How long were you contemplating?

20 MS. MAINIGI: Single spaced or double?

21 THE COURT: I would say single spaced.

22 MS. MAINIGI: We can do it.

23 THE COURT: Very good. We'll see you all at  
24 2 o'clock.

25 (Luncheon recess taken)

D9Q3BAN5

1 AFTERNOON SESSION

2 2:15 p.m.

3 (In open court; jury not present)

4 THE COURT: I told my courtroom deputy to tell the  
5 jury that to make up for some lost time and to accommodate  
6 matters that I have at the end of the day, we're going to go  
7 without a break starting now, and we'll go for two hours to  
8 4:20 and that will conclude for today.

9 So let's get the witness back on the stand and let's  
10 bring in the jury.

11 (Jury present)

12 THE COURT: Ladies and gentlemen, in recognition of  
13 your undoubted desire to avoid the kind of snacks that we  
14 provide, we're going to go without a midafternoon break, but we  
15 will end at 4:20. So go ahead, counsel.

16 MR. CORDARO: Thank you, your Honor.

17 BY MR. CORDARO:

18 Q. Mr. Thomas, would you mind turning to Defendant's Exhibit  
19 58 in evidence, which is tab nine in the defendants binder.

20 A. Yes. Okay.

21 Q. Mr. Thomas, do you recall seeing this memorandum yesterday?

22 A. I do.

23 Q. Is this the St. Patrick's Day memorandum?

24 A. Yes, I believe that's what it was referred to.

25 Q. What year was this memorandum issued?

D9Q3BAN5

Thomas - redirect

1 A. 2008.

2 Q. Approximately how long after the start of the Hustle was  
3 St. Patrick's Day of 2008?

4 A. About seven months.

5 Q. This memorandum refers to certain kinds of loans, does it  
6 not?

7 A. It does.

8 Q. What kinds of loans?

9 A. Stated income loans.

10 Q. You discussed stated income loans earlier today, didn't  
11 you?

12 A. Yes.

13 Q. In fact, you used a nickname for them. Could you use that  
14 nickname again?

15 A. Sure. Liar's loan.

16 Q. Did stated income loans carry a certain kind of risk?

17 A. Yes.

18 Q. What kind of risk is that?

19 A. They were obviously higher risk than a loan you could  
20 validate income.

21 Q. Were stated income loans included in the High-Speed Swim  
22 Lane?

23 A. Yes.

24 Q. Were they included in the High-Speed Swim Lane prior to the  
25 issuance of this memo?



D9Q3BAN5

Thomas - redirect

1 A. Yes.

2 Q. What does this memo purport to do?

3 A. It I believe it reinstitutes some kind of underwriting  
4 review, reasonability review for stated income loans.

5 Q. Just to be clear, the prime CLUES accept process, there  
6 would have been underwriter involvement in the process  
7 regardless if it was a stated income loan, is that correct?

8 A. That's correct.

9 Q. Could you turn to tab 11, please.

10 A. Sure. Okay.

11 Q. This is Defendant's Exhibit 61 in evidence.

12 A. Yes.

13 Q. What is the date on this memorandum?

14 A. April 25, 2008.

15 Q. So is it fair to say this was issued about five weeks after  
16 the prior memorandum?

17 A. That's correct.

18 Q. The previous memorandum was Defendant's Exhibit 58?

19 A. Yes.

20 Q. What did this memorandum purport to do, if you know?

21 A. It appears that was a cleared to close checklist that was  
22 required from underwriting. It was putting that back into  
23 place.

24 Q. In the High-Speed Swim Lane, was there any underwriting  
25 involvement in the cleared to close process prior to whatever

D9Q3BAN5

Thomas - redirect

1 this memo did?

2 A. No.

3 Q. This memo contains a line that says it has been superseded  
4 by operations bulletin 08-237. Do you see that language about  
5 a third of the way down?

6 A. I do.

7 Q. Could you explain to us what that means.

8 A. That means that when bulletin 08-237 came out, this  
9 bulletin was no longer in effect.

10 Q. So could you turn to tab 19, please.

11 A. Okay.

12 Q. This is Defendant's Exhibit 66 in evidence. Is this  
13 bulletin 08-237?

14 A. It is.

15 Q. Is this the bulletin that superseded Defendant's Exhibit  
16 61?

17 A. Yes.

18 Q. What date was this bulletin issued?

19 A. May 21, 2008.

20 Q. So this one came a little under a month after the previous  
21 bulletin we discussed?

22 A. Yes. About 10 months after.

23 Q. What did this bulletin purport to do?

24 A. This bulletin had some additional cleared to close  
25 clarification for what underwriting was required to do at

D9Q3BAN5

Thomas - redirect

1 cleared to close.

2 Q. When you say what underwriting was required to do for  
3 cleared to close, is that a change from the High-Speed Swim  
4 Lane model?

5 A. Yes.

6 Q. Who was doing cleared to close in the High-Speed Swim Lane?

7 A. The processor.

8 Q. Mr. Thomas, yesterday you were asked some questions about  
9 quality assurance by both sides.

10 A. Yes.

11 Q. Could we just step back for a second. Was quality  
12 assurance at FSL performed on every loan that went from  
13 application to funding?

14 A. No.

15 Q. Why not?

16 A. It was just too many loans to review, so you'd review a  
17 sampling of loans to try to get an understanding of the issues.

18 Q. Do you have any sense of the size of the sample for any  
19 given set of loans?

20 A. We looked at some numbers. There were 60 loans here, 129  
21 loans there.

22 Q. I think that you are referring to Plaintiff's Exhibit 58.  
23 So if we go to plaintiff's binder, I'm sorry I'm going to run  
24 you back and forth between the binders.

25 A. That's okay.

D9Q3BAN5

Thomas - redirect

1 Q. If you could go to the third page of that exhibit. Is that  
2 the 60-loan review to which you were referring?

3 A. Yes.

4 Q. First of all, just to take this. You were asked some  
5 questions earlier today about this very e-mail and I believe  
6 the word that counsel used was "problems."

7 With respect to the issues on the bottom of the page,  
8 is "problems" the accurate word in quality assurance?

9 A. No. "Findings" would be the right word.

10 Q. In this particular review, 59 out of 60 loans were deemed  
11 to be what?

12 A. High risk.

13 Q. All of these findings on the bottom here, with the  
14 exception of the 53 fraud detectors which we talked about were  
15 erroneous, the rest of those findings, did those contribute to  
16 that high risk number?

17 MR. HEFTER: Objection, your Honor. Foundation. I  
18 believe based on the witness's testimony and your ruling on my  
19 objection along the same lines yesterday.

20 THE COURT: I'm not sure it is exactly the same, but I  
21 do think you need to lay a foundation.

22 MR. CORDARO: Thank you, your Honor.

23 Q. Mr. Thomas, were you familiar with the quality assurance  
24 process at FSL?

25 A. Yes.

D9Q3BAN5

Thomas - redirect

1 Q. How were you familiar with it?

2 A. Michael Burns, who reported to me, ran the quality  
3 assurance process.

4 Q. Did you have any familiarity with this particular quality  
5 assurance review?

6 A. Yes, it was a review that our India folks had done, and  
7 then the quality assurance and control group had rereviewed  
8 those loans.

9 Q. What kind of loans were being reviewed?

10 A. Hustle loans.

11 Q. Who is Don Harris?

12 A. Don Harris reports to Steve Brent in the quality assurance  
13 and control group.

14 Q. Did you ever discuss quality assurance with Don Harris?

15 A. Yes.

16 Q. Going back to my question. Are you familiar with what high  
17 risk means?

18 A. Yes.

19 Q. What does high risk mean?

20 A. So that would have been a finding in the QA report that the  
21 quality assurance and control or QA group would determine a  
22 high risk question.

23 Q. There were 60 loans in this process, correct?

24 A. Correct.

25 Q. If you add up these numbers down here, at the bottom of the

D9Q3BAN5

Thomas - redirect

1 page and over to the next page, that comes out to a lot more  
2 than 60. What is the explanation for that?

3 A. It comes up to about 129 findings. So one loan could have  
4 multiple findings.

5 Q. Did these findings contribute to the high risk number in  
6 the middle of this third page of the exhibit?

7 A. Yes.

8 Q. You testified that QA was only a sample. If these 60  
9 loans -- I'll step back for a second.

10 What was the purpose of having these findings in the  
11 first place?

12 A. So the purpose was to look at the process to make sure that  
13 there weren't any breakdowns, or if there were more prevalent  
14 issues in one area or another, you could look at that part of  
15 the process and try to see what was going on.

16 Q. Just with respect to these 60 loans?

17 A. No, with the same process. It was a sampling. So if you  
18 had a high number of income findings, for example, you would  
19 look at the process for how you're calculating income or  
20 documenting income.

21 Q. You testified earlier today in response to a question from  
22 counsel about the amount of business that FSL was doing in the  
23 mid 2000s. Do you remember that testimony?

24 A. Yes.

25 Q. Could you give those numbers to us again.

D9Q3BAN5

Thomas - redirect

1 A. Sure. About, we peaked out over \$3 billion in loans per  
2 month.

3 Q. I'd like to ask you a few questions about quality control.

4 A. Sure.

5 Q. Let's stay in this binder and go to Exhibit 297.

6 A. Okay.

7 Q. Were you familiar with quality control process?

8 A. Yes.

9 Q. Did you prepare this second page of Exhibit 197, the  
10 divisional comparison?

11 A. Yes.

12 Q. I think we looked at yesterday, I'll ask Ms. Michaud to  
13 blow up the portion that says FSL all the way past -- yes.  
14 Thank you.

15 We looked at the SUS numbers for EA and conforming  
16 loans in particular yesterday. And could you just give us a  
17 refresher on what SUS means?

18 A. Yes. That means severely unsatisfactory loan.

19 Q. What is the implication of a severely unsatisfactory loan?

20 A. So that would mean it's unsalable to an investor.

21 Q. But at what point is the quality control process being  
22 done?

23 A. After funding and after being sold.

24 Q. So the loan has been sold?

25 A. Yes.

D9Q3BAN5

Thomas - redirect

1 Q. Which of the loans in this group here were eligible for  
2 sale to the Fannie Mae and Freddie Mac?

3 A. So the expanded approval EA and conforming.

4 Q. We went over those numbers yesterday. Now I want to focus  
5 your attention on that bar, and you don't have to blow it up,  
6 Ms. Michaud. There is that bar on the bottom that's blue. It  
7 says non-weighted and weighted.

8 Could you explain quickly what those two rows are  
9 measuring?

10 A. So the non-weighted is simply the mathematical percentage  
11 of how many findings, how many loans with SUS versus how many  
12 loans were audited. But if you look at the last column, it  
13 says unit percent, that is the percentage of all fundings in  
14 that quarter that would fall into that bucket.

15 So, for example, in quarter one 2008, 81 and a half  
16 percent of the loans funded in that quarter were conforming  
17 loans.

18 Q. Let's stick with the rows though. What does weighted mean?

19 A. Weighted just means that we would weight the findings by  
20 the bucket. So 81 -- you basically say 81.5 percent of that  
21 conforming rating would go into that factor.

22 Q. Was either the non-weighted or the weighted number  
23 considered the final number was one or the other more final?

24 A. Weighted.

25 MR. CORDARO: Ms. Michaud, could you just curser to



D9Q3BAN5

Thomas - redirect

1 the top of this box here and pull it up slightly so I can see  
2 what's above that light blue -- yes. You are about to do it.  
3 Why don't you take it off. There you go.

4 Q. On the very top, there is a row and there are two columns  
5 on the right side. One of them says completed plus initial SUS  
6 and one that says completed SUS only, correct?

7 A. Correct.

8 Q. For which time period is this?

9 A. Quarter one 2008.

10 Q. Could you just explain quickly the relationship between the  
11 numbers in the completed plus initial and the relationship  
12 between the numbers in the completed SUS?

13 A. Sure. So the completed SUS only, only included files where  
14 the audit had been confirmed. So the rebuttal process was  
15 over. And then the completed plus initial included those loans  
16 plus the initial SUSs that hadn't finished the rebuttal  
17 process. So the final number would always end up somewhere in  
18 between the completed, that was the low end, that was the  
19 minimum you could get, because those were already final, and  
20 then the high end was completed plus initial. That means  
21 nothing else was overturned, that's what the number would be.  
22 So the final number would be in between.

23 Q. For weighted, and at the bottom row weighted, does that  
24 stand for all FSL?

25 A. Yes, that's all FSL.

D9Q3BAN5

Thomas - redirect

1 Q. There are two numbers there. One says 10.3 percent and the  
2 other says 8.9 percent?

3 A. Yes.

4 Q. When you were talking about the expectation of being in  
5 between those two numbers, would it be between those two  
6 numbers?

7 A. That's correct.

8 Q. Could we look at Defendant's Exhibit 2. That is tab two in  
9 defendant's binder. Defendant's Exhibit 73 in evidence.

10 Before we blow anything up, let's focus on the column  
11 that has the 2008 quarter one results. We were just looking at  
12 that, correct, Mr. Thomas?

13 A. Correct. That's what would match up with the other report.

14 Q. We look at FSL. And do you see the gray bar?

15 A. Yes.

16 Q. What is the number for FSL for quarter one 2008?

17 A. 9.8 percent.

18 Q. Is that the number that Mr. Sullivan was showing you  
19 yesterday?

20 A. Yes.

21 Q. Is that number between the two ranges on plaintiff's  
22 exhibit that we were just discussing?

23 A. Yes.

24 Q. Is that the final number?

25 A. Yes.

D9Q3BAN5

Thomas - redirect

1 Q. Mr. Thomas, is the FSL number in Defendant's Exhibit 73  
2 broken out by EA conforming or any other type of loan?

3 A. No.

4 Q. So what does that number represent?

5 A. This is the total weighted SUS for all of Full Spectrum.

6 Q. Remind us again what was the standard within Countrywide  
7 for a quality control?

8 A. 4 percent.

9 Q. Mr. Thomas, you noticed, if you look, that in the FSL there  
10 is a row there that says "completed audit." Do you see that?

11 A. Yes.

12 Q. What does that mean?

13 A. That's the total number of audits that were completed for  
14 the quarter.

15 Q. In the fourth quarter of 2007, there were looks like 408  
16 completed audits?

17 A. That's correct.

18 Q. The first quarter of 2008, there were 1,742 completed  
19 audits?

20 A. That's correct.

21 Q. Do you have any understanding as to why the number jumped  
22 by approximately 1330 audits?

23 A. My understanding is two fold. They would always look at  
24 the previous quarter to determine what the audit or what kinds  
25 of programs to audit. And that was also the time period that

D9Q3BAN5

Thomas - redirect

1 Bank of America was doing some due diligence on the acquisition  
2 of Countrywide. So that may have driven up audits as well.

3 Q. Mr. Thomas, could you look at tab three, which is  
4 Defendant's Exhibit 193.

5 A. Yes.

6 Q. If you look at the third page of that exhibit, there is a  
7 phrase in your e-mail that says "reduce touches."

8 A. Yes.

9 Q. You remember being asked about that?

10 A. I do.

11 Q. What do you mean by "reduce touches" in this context?

12 A. In this context it means to reduce the rework or how many  
13 times the back and forth had to go. So how many touches you  
14 had on a file.

15 Q. I believe -- what was the date of this e-mail?

16 A. July 18, 2007.

17 Q. So where does this date sit in relationship to the  
18 High-Speed Swim Lane?

19 A. This was before the High-Speed Swim Lane, kind of in the  
20 pilot design.

21 Q. What was the purpose of this e-mail?

22 A. The purpose of this e-mail was to document all the ideas  
23 that were discussed in the initial design meeting that I was  
24 involved in.

25 Q. With respect to reducing touches, could you get more

D9Q3BAN5

Thomas - redirect

1 specific within the loan origination process as to where we're  
2 talking about reducing touches here?

3 A. So, this specific -- some of the examples underneath this  
4 talked about returns, so typically called a return when  
5 something was submitted to underwriting, there was an issue and  
6 it was returned back to processing to do some kind of fix. So  
7 if there were a lot of returns, that means there was some  
8 problems in the building of the file.

9 Q. At the time you wrote this e-mail, would you have  
10 considered the cleared to close process a touch?

11 A. Technically it is a touch. Not a touch I was talking about  
12 in this part of the process.

13 Q. Look at Defendant's Exhibit 752, tab four, please.

14 A. Okay.

15 Q. This e-mail makes reference to the branch. Do you see  
16 that?

17 A. Yes.

18 Q. Could you just explain to us what the branch means in  
19 relationship to the High-Speed Swim Lane, if anything?

20 A. So branches, actual branches were locations, like in a  
21 strip mall or somewhere where you'd actually go into a location  
22 to do a loan. And they did not employ the High-Speed Swim Lane  
23 to my recollection. They were also much smaller in size than  
24 let's say a call center. Call centers could have a  
25 significant -- significantly more amount of volume than a

D9Q3BAN5

Thomas - redirect

1 single branch.

2 Q. Would an application that started in a call center be  
3 eligible for the High-Speed Swim Lane?

4 A. It would, yes.

5 Q. Could you look at tab six, Defendant's Exhibit 378.

6 A. Okay.

7 Q. Actually, we can move past that.

8 Let's go to plaintiff's exhibits. Oh, I've covered  
9 that too.

10 Do we have Defendant's Exhibit 4036? Okay. This is  
11 where we'll need a technology change, your Honor. Hopefully  
12 very briefly, otherwise we'll go back and do it the old  
13 fashioned way.

14 THE COURT: Do defendants have it on their machine?

15 MR. CORDARO: I would assume so.

16 THE COURT: Why don't you put it up now. Why don't  
17 they put it up.

18 MR. CORDARO: No, I'm sorry. That is not the correct  
19 exhibit -- yes, it is. I'm sorry. Could you turn to the page  
20 that had the organizational chart. I want the same page that  
21 counsel showed to the jury and just that page. Perfect. Thank  
22 you. I appreciate that.

23 Q. Mr. Thomas, is this the organizational chart that you were  
24 shown earlier today?

25 A. Yes.

D9Q3BAN5

Thomas - redirect

1 Q. Do you know what the time period for this organizational  
2 chart was?

3 A. The date on here says September 4, 2007.

4 Q. Did the organizational chart at FSL change at all after  
5 central fulfillment came into existence?

6 A. Definitely, yes.

7 Q. Okay.

8 MR. CORDARO: Now we will use the Elmo. Before it  
9 goes up on the Elmo, I would like to mark for identification as  
10 Plaintiff's Exhibit 426 a demonstrative exhibit, a  
11 demonstrative that counsel for the bank defendants showed to  
12 the jury during his opening statement. I would like to show it  
13 to the witness.

14 THE COURT: Okay.

15 MR. CORDARO: It should be 427. May I approach, your  
16 Honor?

17 THE COURT: Yes.

18 MR. CORDARO: I would move Plaintiff's Exhibit 427  
19 into evidence, please.

20 MR. SULLIVAN: No objection.

21 MR. HEFTER: No objection, your Honor. I am just  
22 requesting the Court if we can get a copy of it.

23 MR. CORDARO: Of course, certainly.

24 THE COURT: Received.

25 (Plaintiff's Exhibit 427 received in evidence)

D9Q3BAN5

Thomas - redirect

1 Q. Mr. Thomas, are you familiar with the reporting structure  
2 at FSL post central fulfillment?

3 A. Yes.

4 Q. If you look at the dark gray boxes. There are three of  
5 them.

6 A. Yes.

7 Q. Each one of them has a city attached to it, is that  
8 correct?

9 A. Yes.

10 Q. What is the significance of those cities?

11 A. Those are areas that we have the central fulfillment teams.

12 Q. What is the significance of those cities with respect to  
13 the High-Speed Swim Lane?

14 A. Those would have been the locations that employed the  
15 High-Speed Swim Lane.

16 Q. Are there any other locations that you know of that  
17 employed the High-Speed Swim Lane?

18 A. Hatboro, Pennsylvania.

19 Q. It's not on this particular exhibit?

20 A. It was a smaller location.

21 Q. Was it part of central fulfillment?

22 A. Yes.

23 Q. You see just below the word central fulfillment, there is  
24 the name Wade Comeaux EVP?

25 A. Yes.



D9Q3BAN5

Thomas - redirect

1 Q. Who is Mr. Comeaux?

2 A. So he was hired to run central fulfillment.

3 Q. Do you recall when that happened?

4 A. I don't recall the exact date but it was I think in late  
5 2007.

6 Q. Below him there are four SVPs. What does SVP stand for?

7 A. Senior vice president.

8 Q. This entire group here, this central fulfillment group,  
9 correct me if I use the wrong term, but what division of FSL is  
10 this?

11 A. Full Spectrum Lending.

12 Q. For example, is this the same line of reporting as the  
13 underwriters?

14 A. Central fulfillment?

15 Q. Right.

16 A. In -- no, not -- the traditional pre-Hustle would have  
17 flowed up through Cliff Kitashima. In the Hustle the  
18 underwriting functions now would report up through this.

19 Q. You can see that there is a somewhat lighter gray box that  
20 overlays the dark gray box?

21 A. Yes.

22 Q. Do you know what the lighter gray box is meant to depict  
23 here?

24 A. The entire central fulfillment.

25 Q. Who does the entire central fulfillment report to directly?

D9Q3BAN5

Thomas - redirect

1 A. Rebecca Mairone.

2 Q. What was her title?

3 A. Managing director, chief operating officer.

4 MR. CORDARO: Your Honor, the United States has  
5 nothing further on direct.

6 THE COURT: Any recross?

7 RECROSS EXAMINATION

8 BY MR. SULLIVAN:

9 Q. Am I missing something, sir? Are you on this chart at all?

10 A. What's that?

11 Q. Are you on this chart at all?

12 A. No.

13 MR. SULLIVAN: Thank you. No further questions.

14 MR. HEFTER: I have one question or a few questions  
15 related to the chart, your Honor.

16 THE COURT: Okay.

17 RECROSS EXAMINATION

18 BY MR. HEFTER:

19 Q. Going to the chart, Mr. Thomas, James White, senior vice  
20 president. He was an underwriter, correct?

21 A. He was previously ran an underwriting center.

22 Q. He ran an underwriting center. He was the senior  
23 underwriter in the company?

24 A. He was the underwriting site manager.

25 Q. Armand Massie, he was an underwriter too, correct?

D9Q3BAN5

Thomas - recross

1 A. I don't think Armand was. I don't remember his previous  
2 experience. He was kind of at least new to our part of the  
3 organization. But I don't remember his experience.

4 Q. David Sallis was an underwriter, correct?

5 A. He was an underwriting site manager.

6 Q. But his previous job he was actually in fact an  
7 underwriter, correct?

8 A. He was an underwriting site manager.

9 Q. He had underwriting training, correct?

10 MR. CORDARO: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. Mr. Robert Price was an underwriter, correct?

13 A. He was an underwriting site manager.

14 Q. He had underwriting training, correct?

15 MR. CORDARO: Objection.

16 THE COURT: Sustained.

17 Q. He previously was an underwriter before central  
18 fulfillment, correct?

19 MR. CORDARO: Objection.

20 THE COURT: Sustained. Hearsay.

21 Q. Mr. Price was an underwriting manager and ran a team of  
22 underwriters prior to central fulfillment, correct?

23 MR. CORDARO: Objection.

24 THE COURT: Sustained.

25 MR. HEFTER: No further questions, your Honor.

D9Q3BAN5

Thomas - recross

1 THE COURT: Thank you so much. You may step down.

2 (Witness excused)

3 THE COURT: Please call your next witness.

4 MS. NAWADAY: Your Honor, the government calls Edward  
5 O'Donnell.

6 THE DEPUTY CLERK: Please take the witness stand.

7 Please remain standing, raise your right hand.

8 (Witness sworn)

9 THE DEPUTY CLERK: Please be seated. State your name  
10 and spell it slowly for the record.

11 THE WITNESS: My name is Edward O'Donnell.

12 E-D-W-A-R-D O-D-O-N-N-E-L-L.

13 EDWARD O'DONNELL,

14 called as a witness by the Government,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. NAWADAY:

18 Q. Good afternoon, Mr. O'Donnell.

19 A. Good afternoon.

20 Q. Can you tell the jury where you currently live.

21 A. I live in Pittsburgh, Pennsylvania.

22 Q. Does anyone live there with you?

23 A. Yes, I live with my wife, seven-year-old stepson, and my  
24 mother-in-law.

25 Q. Can you tell us about your educational history beginning

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O'Donnell - direct

1 with college.

2 A. Sure. I grew up in New Haven, Connecticut, went to school  
3 in Connecticut at Southern Connecticut State University and  
4 Fairfield University.

5 Q. Did you graduate from college?

6 A. I did. I studied a bachelor's in political science and  
7 economics.

8 Q. Are you currently employed?

9 A. I am.

10 Q. Who do you work for?

11 A. I work for Fannie Mae in -- I work out of Pittsburgh, but I  
12 also work in Dallas, Texas, and Washington, D.C.

13 Q. What is your current title at Fannie Mae?

14 A. My official title is vice president of credit risk  
15 management.

16 Q. Can you describe for the jury your responsibilities.

17 A. The group I lead basically provides risk support for the  
18 for the loan servicing organizations. So, we provide products  
19 and guidelines and policies regarding servicing the loans or  
20 collecting payments on loans that Fannie Mae has purchased.

21 Q. Can you explain what you mean by servicing a loan.

22 A. Servicing in its basic form is collecting the payments on a  
23 monthly basis and applying them to a loan. If a borrower  
24 should get in trouble, we have products to help the borrower  
25 try to resume payments, get something more affordable, and stay

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O'Donnell - direct

1 in their home.

2 Q. What are you referring to when you say "products"?

3 A. Probably the most common product that's been used is a loan  
4 modification. So that's an instance where the borrower's rate  
5 is lowered or the term might be extended, or both, to try to  
6 make the payment more affordable so they can avoid having to  
7 sell the home, or worst case, experience a foreclosure.

8 Q. Were you employed in 2007?

9 A. I was.

10 Q. Who did you work for in 2007?

11 A. In 2007 I worked for Countrywide Home Loans, specifically  
12 the Full Spectrum Lending Division.

13 Q. Let's step back a little further in time. When were you  
14 first employed in the mortgage lending industry?

15 A. I started in the lending industry in the late '80s. For  
16 the first 10 years of my career I worked at a company called  
17 Associates Financial. We made consumer loans and we also made  
18 mortgage loans.

19 Q. How long did you work for Associates Financial?

20 A. Roughly 10 years.

21 Q. Can you describe for the jury in general terms what you did  
22 during those 10 years?

23 A. It's been a long time. I started as a loan officer where I  
24 made loans directly to borrowers. We also did the servicing of  
25 the loans or the collecting of the loan payments back on a

D9Q3BAN5

O'Donnell - direct

1 monthly basis. And while I was at Associates I also  
2 supervised, eventually managed the branch and supervised  
3 multiple branches in a region.

4 Q. What was your next job after Associates?

5 A. After I left Associates, I briefly spent a year at  
6 Transamerica in the southeastern part of the country where I  
7 did basically the same thing. I supervised a number of branch  
8 loan sales branches. In four states in the southeast.

9 Q. What was your next position after that?

10 A. I joined Conseco Financial as a general manager for the  
11 central region, in the central part of the United States. I  
12 had about 30 branch offices, a couple hundred people across the  
13 Midwest where we made mortgage loans. In that role, I also  
14 supervised the underwriting of loans, loan processing, and some  
15 compliance.

16 Q. How long were you at Conseco?

17 A. I was at Conseco roughly three years.

18 Q. Where did you go next?

19 A. My last job at Conseco was to run or start and run a  
20 central fulfillment operation. So my role changed. When I got  
21 in that job, I was contacted by Countrywide Financial to take a  
22 very similar role with their company, in a division that was  
23 planned to have a lot of growth.

24 Q. What division was that?

25 A. Full Spectrum Lending.

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O'Donnell - direct

1 Q. Did you move to -- did you join Full Spectrum Lending?

2 A. I did. I relocated to Dallas. Joined Full Spectrum  
3 Lending as a senior vice president of underwriting.

4 Q. What year was that?

5 A. That was January of 2003.

6 Q. What was your title when you first joined Full Spectrum  
7 Lending?

8 A. I joined as a senior vice president of underwriting.

9 Q. How long did you hold that position?

10 A. I held that position until 2005. I was promoted in 2005 to  
11 executive vice president, and I picked up the additional  
12 responsibility of running not only the central underwriting  
13 group, but also the central funding group.

14 Q. How long did you hold that position?

15 A. I held that position until the summer of 2007, when my role  
16 changed, and I took over a risk management role. It was more  
17 focused on quality and compliance and data and analytics.

18 Q. During the time you were executive vice president of  
19 central services, who did you report to?

20 A. I reported to Cliff Kitashima who was the chief credit and  
21 chief risk officer.

22 Q. What were your responsibilities as executive vice president  
23 of central services?

24 A. I supervised centers across the U.S. There was one in  
25 Rosemead, California; one in Chicago; one in Chandler, Arizona,



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O'Donnell - direct

1 which is right outside of Phoenix; and one in Plano, Texas, and  
2 that moved to Richardson, Texas. So I supervised all the  
3 employees there, the underwriting activities, and the funding  
4 of loans.

5 In addition to that, I supervised a small quality  
6 assurance team and a data and analytics team that kind of  
7 provided all the reporting and metrics that we used to run and  
8 assess the business.

9 Q. I just want to back up a little bit. You mentioned the  
10 data and analytics group. Can you explain in a little more  
11 data what that did?

12 A. Full Spectrum underwent dramatic growth from the time I  
13 started all the way through 2007. And the group specifically  
14 that I ran, I started in the underwriting group, we had about  
15 97 employees. The size of that group grew to over 400. The  
16 funding group at the same time, I didn't supervise that  
17 initially, but eventually they had over 300 people in the  
18 funding group. So with 700 employees, you need to know what  
19 they're doing. We tracked a lot of things. We tracked their  
20 productivity. We tracked how many loan files they reviewed,  
21 which loan files they reviewed, what kind of authority they  
22 had, what kind of decisions they made, how quickly the loans  
23 moved through the pipeline from application to funding. And  
24 ultimately what the quality of those loans looked like.

25 Q. I believe you testified you were based in Texas during that

D9Q3BAN5

O'Donnell - direct

1 time?

2 A. Yes. I lived in Plano, Texas, which is just outside of  
3 Dallas.

4 Q. You mentioned that you supervised funding centers across  
5 the country, is that right?

6 A. That's right.

7 Q. So I gather that you supervised -- withdrawn.

8 Employees you supervised were not all based in Texas?

9 A. No. I generally would spend a couple weeks a month  
10 traveling to the fulfillment centers, visiting the underwriting  
11 and funding teams, checking on how well things were running,  
12 addressing any issues that might come up.

13 Q. Did you have any involvement in hiring employees for the  
14 centers that you supervised?

15 A. I did. I would say in two ways. I set the criteria for  
16 the underwriting employees when I first started because of the  
17 growth plans that we had. And then I also hired some of the  
18 key managers that report directly to me that ran the centers  
19 themselves in Chandler and in Richardson.

20 Q. Who were the key managers that you hired?

21 A. James White. Jim White ran the Chandler, Arizona, center  
22 first for underwriting and then for underwriting and funding.  
23 And Robert Price I hired in Plano, Texas, and then he  
24 ultimately -- to run underwriting and he ultimately ended up  
25 running the funding operation in Richardson, Texas, as well.

D9QTBAN5

O'Donnell - direct

1 Q. What did you mean when you said that you also set the  
2 criteria for other hires?

3 A. The criteria for what kind of employee we would want to  
4 hire, so what level of experience, what kind of background, how  
5 much we would pay them, where we would locate them, how large  
6 the teams would be, how large the span of control a manager  
7 will be asked to manage. Basically all the elements of how the  
8 center would run and who would be in it.

9 Q. Did you set the criteria for hiring underwriters in the  
10 2007 time frame?

11 A. Prior to that, yes, so we -- I was doing it then, but we  
12 had done it from the time I joined in 2003.

13 Q. And what type of experience were you looking for in  
14 underwriters that you were involved with hiring?

15 A. Well, we had two different types of underwriters, we had  
16 more of a junior underwriter that we called a underwriting  
17 associate. That would be more entry level, one to three years  
18 of underwriting experience, and they might have some or  
19 experience in the industry as a processor or salesperson before  
20 that. The other position that we had -- and we had multiple  
21 grades, but we had underwriters, and there I was looking for  
22 more like five years or more experience with an underwriter.  
23 Generally they might have worked for our competition, or even  
24 beyond that on the sales or processing side of the business as  
25 well.

D9QTBAN5

O'Donnell - direct

1 Q. And did the underwriters that you supervised generally have  
2 that level of experience?

3 A. They did.

4 Q. Can you describe for us generally the types of loans that  
5 Full Spectrum processed in 2007?

6 A. In 2007 we were rapidly moving mostly toward a prime model,  
7 but we had done subprime for a long time and we were trying to  
8 make a transition to prime loans.

9 Q. Do you have an understanding of the reason for that  
10 transition into prime loans?

11 A. The market was really changing, so the desire by investors  
12 to buy subprime loans was drying up. So prime loans were much  
13 more attractive for investors and quickly almost becoming the  
14 only game in town.

15 Q. Are you familiar with something called a new customer  
16 acquisition group or NCA?

17 A. Yes.

18 Q. Could you explain to us what that is?

19 A. The NCA was a group that was part of the Countrywide, but  
20 in a different division. So there was another retail division,  
21 if you will, so they made loans to customers directly, and NCA  
22 was part of that group. They joined that group Full Spectrum  
23 sometime in the early to middle 2006 time frame.

24 Q. And what division was the new customer acquisition group  
25 initially a part of?

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O'Donnell - direct

1 A. They were part of consumer markets division or CMD, as we  
2 commonly referred to it.

3 Q. And do you have an understanding of the reason why the NCA  
4 group moved into Full Spectrum?

5 A. NCA had more of a traditional prime processing model. They  
6 relied more on loan processors and less on underwriters. Full  
7 Spectrum had had a heavy reliance on underwriters in its  
8 existing model, and the thought was that NCA joining Full  
9 Spectrum would help jump start our move toward the prime  
10 business.

11 Q. Are you familiar with the work flow in the NCA model?

12 A. I am. Before NCA officially joined Full Spectrum, both  
13 myself and my boss at the time, Cliff Kitashima, spent some  
14 time in NCA. We visited the center in Plano, Texas, and we met  
15 with a management team asked about their business model and  
16 kind of how things worked, how did the loan go from application  
17 to funding. And we sat physically sat side by side with some  
18 of the employees and watched what they did, looked at the  
19 systems they used, which were slightly different than ours. We  
20 asked them about their authority and how they tracked  
21 productivity and how long it took to get a loan through the  
22 process. And then we looked at how they used underwriters  
23 differently than we were using them in Full Spectrum.

24 Q. How were they using underwriters in NCA?

25 A. In that model underwriters were more of an escalation

D9QTBAN5

O'Donnell - direct

1 point, so the processor would kind own the loan from start to  
2 finish, but if he or she had a problem on the loan or didn't  
3 have the right authority or maybe had something that was  
4 complex and was not really sure what to do, they could route  
5 that loan to an underwriter. If the loan started out as an  
6 acceptable loan or prime CLUES accept and it for some reason  
7 changed to refer and had some exceptions on it, it would be  
8 routed for review as well.

9 Q. Would you remind us what prime CLUES accept is?

10 A. It's simply an output from the automated underwriting  
11 engine that basically say from the data that's been put in, it  
12 look like the loan is acceptable to the guidelines or  
13 ultimately an investor.

14 Q. And did NCA work with prime CLUES accept loans?

15 A. They worked with both prime CLUES accept and refers.

16 Q. And can you describe the work flow of prime CLUES accept  
17 loan through the NCA work flow?

18 A. It was sort of a -- if you can imagine, a cradle to grave  
19 approach. So a loan would be assigned to a processor and that  
20 processor would documents from the borrower, they would receive  
21 reports like title reports and appraisal reports from  
22 third-party companies, and they would make determinations about  
23 whether the documentation was appropriate, acceptable. And in  
24 the model as it came over to us, they could actually draw the  
25 loan documents themselves, arrange a closing, get the loan

D9QTBAN5

O'Donnell - direct

1 closing documents back and fund the loan.

2 Q. You referred to a loan processor a minute ago. Was there  
3 any difference between a loan processor and loan specialist?

4 A. In full Spectrum we called them loan specialists, but that  
5 was not their title in NCA, they were loan processors.

6 Q. Besides the difference in title, was there any other  
7 difference between a loan processor and a loan specialist?

8 A. The title was one difference. The real difference was in  
9 level of experience. The NCA loan processors were closer to  
10 what the industry looked like. So they had more experience.  
11 They weren't hiring the same type of people we were hiring in  
12 Full Spectrum because they were asking them to do different  
13 work. In the Full Spectrum the loan specialist was more of a  
14 clerk, so they would gather documents. They would communicate  
15 with borrowers for non-critical information, but they were not  
16 asked to make decisions like the loan processor was asked to  
17 make in NCA.

18 Q. And you testified a minute ago that you were involved in  
19 studying the NCA work flow, is that correct?

20 A. Yeah, we made a couple of visits, at least -- cliff  
21 Kitashima and I made a couple of visits at least to the NCA in  
22 Texas to look at their work flow and meet with management.

23 Q. Can you explain to us why you were studying the work flow?

24 A. I didn't have a very large prime loan background. I only  
25 worked for one other company, Conseco, that really made prime

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1 loans. So it was an opportunity to see how CMT did things.  
2 And Countrywide was the largest lender in the United States and  
3 CMD was the biggest division in Countrywide, so it was an  
4 opportunity go over there and steal their brain power on how a  
5 prime model should operate.

6 Q. And at that time, was the NCA work flow different in any  
7 way from the way Full Spectrum processed prime CLUES accept  
8 loans?

9 A. Yeah. So this was 2006 when NCA came over, so it was very  
10 different. Full Spectrum was just getting into prime lending,  
11 and we didn't have the same level of talent, we had a  
12 different -- completely different model. So we processed prime  
13 loans still using underwriters in a couple of different stages  
14 in the process.

15 Q. We'll take it one step at a time. You said underwriters  
16 were involved in a couple of different stages. What was the  
17 first stage in which you might have an underwriter involved?

18 A. So for prime CLUES accept, which means the information goes  
19 into the system, the black box or the underwriting box we  
20 called CLUES said this loan looks like it's acceptable. We  
21 knew that our salespeople who were dealing with the customer on  
22 the front end who would be running the initial run of CLUES  
23 didn't have a lot of prime experience. We knew the loan  
24 specialists didn't have a lot of experience, and frankly knew  
25 the underwriters didn't have a lot of experience. So we were



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1 concerned that we were maybe communicating approvals to  
2 borrowers that may not be correct. So we might be telling you  
3 you're qualified for a prime loan and here's a pretty good rate  
4 and price, only to learn later that someone had made a mistake  
5 and you didn't qualify, and we would come back to you and say  
6 sorry, you don't qualify, the price is now significantly  
7 higher, and that would obviously make people kind of upset.

8 So we put up a step toward the front of the process  
9 right after application called validation. And we had a group  
10 of underwriters that we trained to make sure the CLUES output  
11 was valid so the data looked right, calculations were correct,  
12 and if there was any documentation that came in with the  
13 application, that the documentation supported what was used to  
14 get the CLUES accept.

15 Q. Was there any other part of the work flow that had an  
16 underwriter involved at that time?

17 A. Yeah. So we used something that we had used successfully  
18 before, which was an underwriter at the clear to close point in  
19 the process. So clear to close basically means that you're  
20 committing to the borrower you're going to draw documents and  
21 arrange a closing and money will go out the door at some point.  
22 So we knew that we need to make sure that all of the conditions  
23 that CLUES had required as part of the approval had been met.  
24 So we had the validation up front and a gathering phase that  
25 the processor would do or loan specialist would to, and the

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1 underwriter would review all that documentation, and if he or  
2 she thought it was appropriate, they would issue a clear to  
3 close.

4 Q. What do you mean by "conditions?"

5 A. Conditions are simply stipulations, so it's the CLUES  
6 approval up front is a conditional approval. So if you really  
7 do make the amount of money that you say you do, if the house  
8 is worth what the projected value is said to be, if we are  
9 going to pay off all the debts that we outlined in the  
10 beginning of application stage, if all that happens and all  
11 documentation is there that is supposed to be there in the end,  
12 then the loan is approved. But the underwriter would have to  
13 go through the process and approve the documents and make  
14 assessments about whether the documentation was there, number  
15 one, and if it there, if it met the standards and was  
16 appropriate.

17 Q. Were you involved in any discussions about the quality of  
18 loans coming out of the NCA work flow say in the summer of  
19 2007?

20 A. I was. Once NCA moved over to Full Spectrum, they kind of  
21 were subject to all of our normal processes, which included  
22 getting quality reports from corporate QC. So the corporate QC  
23 department would review loans after they funded, basically  
24 re-underwrite the loan and make sure the underwriter,  
25 processor, whoever made decisions to let that loan go to the

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1 table to sign and fund had done the right thing. What I saw in  
2 terms of the quality at NCA was subpar.

3 Q. Can you tell me who specifically you had discussions with  
4 concerning the quality of NCA loans?

5 A. I spoke to a number of people. My boss, obviously, Cliff  
6 Kitashima, he ultimately had responsibility for credit and risk  
7 management at the company, but I supervised the groups that did  
8 the underwriting and funding of loans. Additionally, in  
9 Richardson, Texas, we at one point moved the NCA kind of into  
10 the funding group in Richardson. So we made a work flow change  
11 because of the quality I was seeing and required the funding of  
12 loans to go through our standard funding group.

13 Q. Let's back up to discussions with Mr. Kitashima first.  
14 What discussions -- when did you discuss the quality of NCA  
15 loans with Mr. Kitashima?

16 A. On a monthly basis we would receive reports from corporate,  
17 the quality control department, and they would identify loans  
18 that were initially in the process of being underwritten by the  
19 QC group and loans that had been finalized. And I discussed  
20 both with him, the finalized QC ratings and the initial ratings  
21 on a monthly basis, just as I did for the other centers.

22 Q. Can you tell us what Mr. Kitashima said specifically about  
23 the quality of NCA loans in any of these meetings?

24 A. We were both concerned about the quality of the NCA loans  
25 and the fact that, since they were now part of our division, if

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1 off-target quality continued it would impact the overall  
2 quality of Full Spectrum's loans. And since both of our jobs  
3 were in part measured -- success for our jobs was measured by  
4 the quality ratings, we were concerned and wanted to see that  
5 change.

6 Q. Did you express any concerns about the NCA work flow to  
7 Mr. Kitashima?

8 A. I did.

9 Q. Can you tell us what you said?

10 A. I thought that the talent level at the NCA was  
11 inconsistent. While they certainly had more experience than  
12 Full Spectrum, they weren't able to execute their role  
13 appropriately, and I based that on the fact that the loans had  
14 problems. And so I talked to him about the fact that we were  
15 thinking about adopting the NCA's model with people that  
16 arguably had less experience, and I was seeing people that were  
17 in a role with more experience today in a similar role struggle  
18 to get the quality mark managed correctly.

19 Q. And did Mr. Kitashima respond to you in any way when you  
20 expressed these concerns?

21 A. He did, and he was supportive of a move that I suggested to  
22 require that the NCA no longer be able to fund their own loans.  
23 So we required that instead of being able for the processor to  
24 take the loan from cradle to grave, they would instead get to  
25 the clear to close stage, and then after they issued a clear to

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1 close, it would be routed to another group. So we would have a  
2 little bit of separation of duty. And that other group would  
3 make sure all the conditions had in fact been cleared and  
4 signed off on before loan documents were drawn and a closing  
5 could take place.

6 Q. Did you have discussions with anyone else about NCA and  
7 loan quality in the summer of 2007 time frame?

8 A. I did. I received feedback. Part of my job was to get  
9 feedback from the folks who really ran the day to day, managed  
10 the teams in underwriting, managed the teams in funding. And I  
11 got a lot of feedback from two of the senior managers in the  
12 Richardson center, John Boland and Robert Price.

13 Q. And let's start with Mr. Boland. What was his role?

14 A. John at first was -- he was a manager in underwriting when  
15 I first met him in Chicago. He was later promoted and  
16 relocated to Texas to take over part of the underwriting group  
17 there. And at the time he supervised several teams of  
18 underwriters who were responsible for doing the prime CLUES  
19 accept model for Full Spectrum, doing the validation and clear  
20 to close. And he also had a team eventually that was  
21 co-located in the NCA location that issued the clear to closes  
22 for them.

23 Q. And what discussions did you have with Mr. Boland  
24 concerning loan quality at NCA?

25 MR. HEFTER: Objection, your Honor.

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1 THE COURT: Well, did you have conversations with  
2 Mr. Boland concerning loan quality at NCA?

3 THE WITNESS: I did.

4 THE COURT: And when -- approximately how many  
5 conversations, if you can estimate, did you have?

6 THE WITNESS: Numerous, your Honor.

7 THE COURT: And approximately when did these  
8 conversations begin?

9 THE WITNESS: They began late 2006 and into 2007.

10 THE COURT: Do you have a specific recollection of  
11 particular things that were said or is it a more general  
12 recollection?

13 THE WITNESS: I would say both. I have --

14 THE COURT: So counsel, why don't you start with the  
15 first specific recollection and move from there.

16 MS. NAWADAY: Thank you, your Honor.

17 BY MS. NAWADAY:

18 Q. Can you tell us about the first conversation that you had a  
19 specific recollection of in which Mr. Boland and you discussed  
20 NCA loan quality?

21 A. John Boland and I were located -- we officed in the same  
22 building on the same floor, and he brought to my attention that  
23 there had been a couple of instances where loans had been  
24 cleared to close by a loan specialist after an underwriter in  
25 his group had said the loan was not ready for closing. And it

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1 had been asserted that it was done intentionally and that we  
2 were letting a loan go to closing that was not ready, and it  
3 was a problem.

4 Q. And why would that be a problem?

5 A. Because we knew the loan stipulations or conditions had not  
6 been received and cleared.

7 Q. And what do you mean that conditions had not been cleared?

8 A. So someone had, in John's underwriting group, an  
9 underwriter, had reviewed the file, reviewed the conditions  
10 that were submitted by the processor as evidence that the loan  
11 was ready, reviewed the conditions and disagreed and said the  
12 loan is not ready to close, go back and get X, Y and Z, and  
13 they did not issue a clear to close. So then the processor  
14 turned around cleared those conditions themselves in the system  
15 and issued the clear to close and OK'ed the loan to go to the  
16 table.

17 Q. Did you have any discussions with Robert Price surrounding  
18 NCA loan quality?

19 A. I did. Robert also officed --

20 MR. HEFTER: Your Honor, same objection. This part is  
21 non-responsive.

22 MS. NAWADAY: I'll back up, your Honor.

23 THE COURT: OK.

24 Q. Can you tell us about a specific -- a conversation that you  
25 specifically recall or an exchange that you specifically recall

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1 with Mr. Price concerning NCA loan quality?

2 MS. MAINIGI: Objection, your Honor. This entire line  
3 of questioning is really not relevant to High-Speed Swim Lane.

4 THE COURT: I think it may have some relevance.

5 When was this conversation that you're about to tell  
6 us about? Approximately when did it occur?

7 THE WITNESS: 2007, your Honor.

8 THE COURT: All right. Overruled.

9 MR. HEFTER: Your Honor, if I may, we would like a  
10 limiting instruction with respect to Mr. O'Donnell's testimony  
11 regarding any conversations he had with Mr. Price.

12 THE COURT: This conversation will be received only as  
13 to the bank defendants, not Ms. Mairone.

14 Go ahead.

15 A. Would you repeat the question?

16 Q. Sure. Can you tell us about a conversation or exchange you  
17 specifically recall with Mr. Price concerning loan quality?

18 A. Robert copied me on an email that he sent to Cheri Shine  
19 who was assisting in the NCA -- running of the NCA division.

20 Q. If I could stop you to clarify, who was Cheri Shine?

21 A. Cheri Shine was a peer of mine. She was also an EVP for  
22 Full Spectrum. She previously had run the funding operation  
23 before I took it over. And Cheri was really kind of a project  
24 specialist. She did a lot of different things for the company,  
25 but in this instance she was assisting in the NCA.



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1 Q. What do you mean she was assisting in the NCA?

2 A. She was providing some supervision to some of the teams.

3 Robert copied me on an email where he was alerting her  
4 to a fact that we had had two instances within NCA of people  
5 violating their authority, this exact same instance where they  
6 were issuing clear to closes when an underwriter had already  
7 determined that the loan was in fact not ready to go to the  
8 table. And he saw it as a big problem, and so the authority  
9 had been taken away from that particular team.

10 Q. What do you mean that the loan specialists were violating  
11 their authority?

12 A. They were making decisions that they were not entitled or  
13 approved to make.

14 Q. And specifically, what were those decisions?

15 A. They were issuing clear to close decisions.

16 MS. NAWADAY: Your Honor, may I approach the witness?

17 THE COURT: Yes.

18 Q. Mr. O'Donnell, I'll ask you to turn to tab 49 in the binder  
19 I just handed you.

20 A. OK.

21 Q. And without getting into the substance of the document, can  
22 you tell us whether you recognize this?

23 A. Yes, this is the email I was referring to from Robert Price  
24 to Cheri Shine.

25 Q. And you see your name on this email?

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1 A. I'm carbon copied on the email from June of 2007.

2 Q. Sorry, I missed the last part of the answer. What is the  
3 date of the email?

4 A. June 25, 2007.

5 MS. NAWADAY: Your Honor, we offer Plaintiff's Exhibit  
6 49 into evidence.

7 MS. MAINIGI: Objection, your Honor. This has to do  
8 with NCA, it has nothing to do with High-Speed Swim Lane at  
9 all. It precedes the start of the High-Speed Swim Lane.

10 THE COURT: Come to the side bar.

11 (Continued on next page)

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1 (At side bar)

2 THE COURT: Go ahead.

3 MS. NAWADAY: The NCA process was merged into the  
4 High-Speed Swim Lane specifically.

5 THE COURT: I took it to be appropriate background.

6 But do I want to ask counsel, when you have  
7 objections, really should just be one or two words, like  
8 "relevance." If I don't understand what you're getting at or  
9 you think it requires further explanation, you can ask for a  
10 side bar, and usually I will accommodate that. But in effect,  
11 an objection of the sort you just raised is a sort of argument  
12 to the jury: Don't pay any attention to this, this doesn't  
13 have anything to do with Hustle, which I think is not the  
14 government's position. And the Court's position is that the  
15 jury could find that this is appropriate background information  
16 to Hustle. So the objection is overruled.

17 (Continued on next page)

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1 (In open court)

2 THE COURT: The objection is overruled. You offered  
3 the exhibit. The exhibit is received, 49 is received.

4 (Plaintiff's Exhibit 49 received in evidence)

5 BY MS. NAWADAY:

6 Q. Mr. O'Donnell, do you see in this document any reference to  
7 the NCA process or an NCA loan specialist?

8 A. There's a note from Paul Everwine, who was an underwriter  
9 in John Boland's group, and he identifies the NCA operations  
10 team manager Sarah Haser. Sarah was the manager over the team.

11 Q. If you could direct your attention to the bottom of the  
12 second page of this email chain, there's an email from Audrey  
13 Knabe?

14 A. Yes.

15 Q. Who is Audrey Knabe?

16 A. Audrey Knabe was a branch operations manager, I believe.

17 Q. Can you read for us the first paragraph of Ms. Knabe's  
18 email?

19 A. She says: Hi there. Here are the results of an audit from  
20 one of the -- one of your files. This particular file was  
21 approved by underwriting at 3:53 p.m. then cleared to close by  
22 you at 4:06 the same day. The underwriter name was also  
23 changed to your name. This throws a red flag to either the  
24 underwriter not signing off on the conditions there were in the  
25 file, or you blindly signing off on the conditions in order to

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1 get a CTC.

2 Q. Thank you. This email was sent by Ms. Knabe to Jessica  
3 Isbell?

4 A. Yes.

5 Q. Who is Ms. Isbell?

6 A. I believe she was a processor in the NCA.

7 Q. And I would like to go through some of the more technical  
8 terms in this paragraph that you just read and some of the  
9 parts that are a little difficult to understand. You read:  
10 The underwriter name was also changed to your name.

11 Do you have any understanding of what Ms. Knabe meant  
12 by that?

13 A. We had a system where we recorded all the conditions  
14 management we called status bar. And in that system it would  
15 keep track of who was clearing the conditions, who was the loan  
16 processor, who was underwriter, so we could identify who did  
17 what. In this case, it appears that the loan processor had  
18 their name in as both the loan processor and took the  
19 underwriter's name out and put their name in as the  
20 underwriter.

21 MR. HEFTER: Your Honor, I move to strike as  
22 non-responsive and the witness's answer is speculation.

23 THE COURT: Well, the last sentence will be stricken  
24 as non-responsive, the rest will stay.

25 Q. Your answer is proceeded a little quickly. Can you explain

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1 again what exactly -- you referred to something called status  
2 bar. Can you explain to us what that is?

3 A. Yes, status bar was what we called the conditions  
4 management system, so it kept track of all of the stages of the  
5 loan. So when a loan got approved by an underwriter, it  
6 captured who did it and at what time. When a loan was cleared  
7 to close, it captured who did it and at what time. In this  
8 case the loan was approved by an underwriter at 3:53 and then  
9 it looks like 13 minutes later the loan was cleared to close,  
10 which would hardly be time for someone to review all the  
11 required conditions and determine that the loan was truly ready  
12 to close.

13 Q. I'm sorry, if I could back up, you got a little ahead of me  
14 again. You read this particular file was approved by the  
15 underwriter at 3:53, then cleared to close as 4:06. Is there  
16 any reason that would be unusual or surprising?

17 A. Yeah, it would be very rare that a loan, if ever, could go  
18 from underwriter approval to a clear to close in 13 minutes.

19 Q. Why is that?

20 A. It would not be time to gather conditions, review  
21 conditions appropriately and determine that everything was  
22 there in the file.

23 Q. And what type of conditions in particular?

24 A. Title report, which would show who owned the home; the  
25 appraisal report, which would show the value and which other

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1 homes in a particular neighborhood the house was being compared  
2 to; income, either reviewing income pay stubs or tax returns,  
3 or if the borrow was stating their income, determining if the  
4 income was reasonable or not; assets, determine if the borrower  
5 had a cushion should they get into trouble they could make  
6 payments if something happened in a short period of time if  
7 they were having difficulty. Simple things like homeowner's  
8 insurance to make sure the right level of coverage was in  
9 place, or determining if the property was in a flood zone and  
10 flood insurance was required. There's a lot to do, and 13  
11 minutes wouldn't be enough time to do very much of it at all.

12 Q. I would like to ask you specifically about some conditions  
13 you mentioned. Can you explain what involved in reviewing and  
14 clearing a condition on title?

15 A. On title it's important to make sure, number one, the that  
16 the borrowers on the application actually owned the home, that  
17 the names are the same, the vesting in those names is correct.  
18 And then you have to also identify if there are mortgages  
19 already on the property, and if they are on the property, are  
20 they being paid off as part of this transaction. And you also  
21 are determining whether or not real estate property taxes had  
22 been paid or need to be paid if they're delinquent. Those are  
23 the major things on the title review condition.

24 Q. You also mentioned a condition on appraisal, can you  
25 explain what you meant by that?

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1 A. So ultimately the house is the collateral for the loan.  
2 It's important to know that the value of the home that the  
3 appraiser has identified is accurate. So what an underwriter  
4 or anyone who is making that decision is asked to do is to look  
5 at the work done by the underwriter and make sure it's been  
6 thorough, that they haven't missed anything. If they have made  
7 comparisons between the properties to determine the value, to  
8 make sure the comparisons are the same or appropriate. An  
9 example would be if the house we were going to make a loan on  
10 had three bedrooms, that they don't use four or five or six  
11 bedroom homes to try to get value up higher, or if the house  
12 was located near the railroad tracks but they went to a better  
13 neighborhood to pick better homes to try to substantiate the  
14 value.

15 Q. You mentioned conditions on income, could there be multiple  
16 conditions on income?

17 A. There could be depending on the borrowers. If there were  
18 two borrowers you had to check the income on both pay stubs,  
19 401(k) statements, tax returns in some instances if they were  
20 self-employed or had unusual income, or assets if we were  
21 asking for proof of bank deposits, or gift money if it was a  
22 purchase transaction.

23 Q. So I'm sorry, you're speaking a little too quickly for me.  
24 I would like you to explain slowly what is involved in  
25 reviewing and clearing an income condition.



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1 A. You're looking for -- first you're looking to see if the  
2 borrower is providing the conditions that were requested. So  
3 if you're supposed to have two pay stubs, do you have two pay  
4 stubs. Then the underwriter has to look at the pay stub and  
5 make sure it's real, that the Social Security numbers match,  
6 that the deductions for things like income taxes and Social  
7 Security are appropriate, the right percentages, so there's no  
8 fraud. So these days it's very easy to create a pay stub, and  
9 we did catch instances of that in underwriting. So they would  
10 do all the normal fraud screens and make sure the borrower  
11 made -- like we talked about on the validation stage, they made  
12 what was originally used to determine the CLUES approval and  
13 that those two things were in sync.

14 Q. You also referred to a condition involving reasonability.  
15 Can you explain what you meant by that?

16 A. Reasonability came into play if the borrower was starting  
17 their income. So both in subprime and in prime we had products  
18 where it was OK to state your income, and an underwriter had to  
19 determine if what was stated made sense for the type of job on  
20 the application.

21 Q. How would an underwriter determine whether the income was  
22 reasonable?

23 A. It's not an easy process and it's not an exact process, but  
24 they would use the borrower's general credit profile to  
25 determine if the income seemed reasonable. So for example, if

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1 a borrower said they made \$20,000 a month but all of their  
2 credit cards were maxed out and they had late payments on their  
3 automobile or late payments on the mortgage and they didn't  
4 have anything in their checking or savings account in their  
5 application, then that wouldn't sound right to an underwriter.  
6 And they would question that and ask for additional  
7 information, like proof that a borrower had more money in their  
8 checking or savings account, or ultimately they would decide,  
9 if they couldn't get comfortable with the income being stated,  
10 they would say that the borrower had to provide full  
11 documentation.

12 Q. You also mentioned a condition on assets. Can you tell us  
13 what that is?

14 A. Some programs required a minimum number of assets called  
15 reserves, and that simply some number of months, might be two  
16 months or three months or four months of kind of reserve  
17 mortgage payments. So if the borrower got into some short-term  
18 trouble, there was some comfort level they could draw on those  
19 assets to make a couple of months of mortgages payments until  
20 things kind of went back to normal.

21 Q. So what's involved in reviewing and clearing a condition on  
22 assets?

23 A. Actually getting the bank statement or the savings  
24 statement or a 401(k) even, and doing the same type of thing  
25 you would do on a check stub or pay stub, making sure it was in

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1 fact the borrower's and wasn't from some business or someone  
2 else, looking at the Social Security number, the balances,  
3 seeing if there were any exceptionally large recent deposits  
4 that were kind of odd, and just determining if the document and  
5 the income or the -- excuse me, the reserves were acceptable.

6 Q. You also mentioned a condition on homeowners insurance?

7 A. Right. All loans were required to have homeowner's  
8 insurance, so we wanted to make sure the borrower had  
9 sufficient level of insurance, should something happen to the  
10 property, that the loan could be paid off.

11 Q. And a condition on flood insurance?

12 A. Right. Not for every loan, but if a borrower lived in a  
13 flood zone, and the underwriter would have to determine whether  
14 they did or didn't, then flood insurance was required by the  
15 program guidelines. And same type of thing, that meant there  
16 was a higher chance there could be a flood event where that  
17 borrower lived and he had to have special flood insurance to  
18 cover that because your normal homeowner's insurance doesn't  
19 cover events of flood.

20 Q. Are there any other examples of conditions on the loan that  
21 you can give us?

22 A. There's employment conditions. So if a borrower says they  
23 work at Fannie Mae, they would have to provide some proof that  
24 they do in fact work at Fannie Mae, what their job is, how long  
25 they had been there, the date they started, their title. And

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1 you might have that for multiple jobs if the borrower hadn't  
2 and at their job for a long period of time.

3 Q. How would a condition on employment be reviewed and  
4 cleared?

5 A. There is a specific form that was sent out by the processor  
6 to employer. The employer would fill that out and it would be  
7 received back. The underwriter would go through the document  
8 and do kind of the same thing, make sure that the name matched,  
9 that the title that was on the document that had come back from  
10 the employer matched the title that was on the application.  
11 And same thing for the income and the time on the job and all  
12 the details, kind of taking it and tying it all together.

13 Q. Any other examples of conditions that you can think of?

14 A. The major conditions were around the collateral, which  
15 would be the appraisal, the title and the requisite insurances,  
16 the borrower's ability to pay, and then their credit. So if  
17 they had any collections on their credit bureau or judgments,  
18 those type of things, the underwriter would have to get  
19 documentation to determine if those needed to be paid off or if  
20 they had in fact already been paid by the borrower and it was  
21 nothing to worry about.

22 Q. If we could blow up the paragraph right below the one  
23 that's currently blown up near the top of page 3. If you could  
24 read that paragraph for us, Mr. O'Donnell?

25 A. It says I'm expecting and hoping you indeed have conditions

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1 in which you have acknowledged having reviewed. Otherwise,  
2 this represents fraud on your behalf, as you have cleared  
3 conditions that have not been met. As I'm sure you are aware,  
4 such behavior is strictly prohibited and is not tolerated, as  
5 fraud is a serious matter.

6 Q. And was Ms. Knabe's email then forwarded by Mr. Boland?

7 A. It was.

8 Q. And who did he send the email to?

9 A. John sent the email on to his boss, Robert Price.

10 Q. And Robert Price was one of your direct reports?

11 A. He was.

12 MS. NAWADAY: If we could blow up the section of  
13 Mr. Boland's email to Mr. Price, the last two sentences of the  
14 email that begins, "After speaking with."

15 Q. Mr. O'Donnell, could you read the bottom portion of the  
16 blow up for us, begins "After speaking with."

17 A. Yes. After speaking with the BOM, she informed me there  
18 was considerable pressure to close loans. She was told she  
19 could not leave until her quota was met. In order to hit the  
20 quota, she felt the below action was necessary. Sarah also  
21 told me she felt this behavior was common among others with  
22 signing authority.

23 Q. Are you aware of any quotas on funding loans that existed  
24 within the NCA process?

25 A. There were goals established on a monthly basis for all of

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1 the production teams to fund loans. My understanding is that  
2 within NCA there was a general goal of funding one loan per  
3 person per day.

4 Q. And now if I could draw your attention to the first page of  
5 the email, the email from Mr. Price to Cheri Shine on which  
6 you're copied, can you read Mr. Price's -- the first paragraph  
7 of his email for us?

8 A. See below. I thought you should see this. I've been  
9 digging into this and asked John to send me a note on others  
10 and let me know what may be triggering it. Aaron and Todd have  
11 done similar checks as well. The overwhelming response is that  
12 the pressure to hit numbers, oftentimes before they're allowed  
13 to leave, no matter what time it is, is driving some of this  
14 behavior. I don't disagree with driving targeted goals, but  
15 the ones they're being given right now with staff they have and  
16 the disarray they're in is obviously contributing to this.  
17 It's not uncommon for employees feeling pressure to take  
18 shortcuts and make poor decisions to hit numbers.

19 Q. Thank you. When Mr. Price says I've been digging into  
20 this, do you have an understanding what he meant by "this?"

21 MR. HEFTER: Objection, your Honor.

22 THE COURT: Sustained.

23 Q. Mr. O'Donnell, you see the reference to Aaron in the email  
24 you just read?

25 A. Yes.

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1 Q. Can you tell us who Aaron is?

2 A. Aaron Kalosis. He was an underwriter manager in the  
3 Richardson Center, also worked for John Boland.

4 Q. And you see the reference Todd?

5 A. Yes.

6 Q. Can you tell us who Todd is?

7 A. Todd Green was an underwriting manager in Richardson as  
8 well -- excuse me, I said Aaron was an underwriting manager, he  
9 was the funding manager. Todd Green was the underwriting  
10 manager. And they both reported to Robert in Richardson.

11 Q. Do you recall having a conversations with Mr. Price about  
12 loan specialists improperly clearing conditions?

13 A. I do.

14 Q. What is the first conversation that you had a specific  
15 recollection of?

16 A. It was around this time. Robert officed right next to door  
17 to me. We spent a lot of time together talking about all  
18 things quality for all the teams he supervised. And this was  
19 uncommon since we didn't have this model with loan specialists  
20 having the ability to do this at Full Spectrum. And he was  
21 bringing it to my attention saying there is this problem with  
22 this model, there's no separation of duties and employees can  
23 override decisions made by underwriters and move loans to  
24 closing when there's nothing to stop it.

25 Q. You testified a minute ago that he said this was uncommon.

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1 What specifically were you referring to when you said this was  
2 uncommon?

3 A. Instances such as this where a loan would be -- an  
4 underwriter's decision would be overridden by a loan specialist  
5 or loan processor and the loan would be cleared to close when  
6 an underwriter said it should not be.

7 MR. HEFTER: Your Honor, I object, and I would like to  
8 approach if that's --

9 THE COURT: All right.

10 (Continued on next page)



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1 (At side bar)

2 MR. HEFTER: Your Honor, the question that was posed  
3 originally was when is the first time you recollect having a  
4 conversation, he then launched into his entire answer. And the  
5 question is when, the question of timing.

6 THE COURT: That wasn't -- no objection was made to  
7 that question. The question was: What is the first  
8 conversation you had a specific recollection of? And the  
9 answer. Then the question was: You testified a minute ago  
10 that he said this was uncommon, what specifically were you  
11 referring to when you said this was uncommon? And he gave his  
12 answer to that question, and that's when you raised your  
13 objection.

14 MR. HEFTER: Right.

15 THE COURT: So I don't think you objected to the  
16 question that you're now -- the objection you're now raising  
17 should have been made, if at all, to an earlier question.

18 MR. HEFTER: I understand, but there's a pattern here.

19 THE COURT: Well, that's --

20 MR. HEFTER: That's why I wanted to side bar.

21 THE COURT: I do think that's true. I think he is not  
22 narrowing his answers to the question put. I think maybe I'll  
23 give him a brief instruction on that right now, let's see how  
24 it goes.

25 MS. MAINIGI: Your Honor, may I raise one issue? I

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1 want to put, for the purpose of the record, an ongoing  
2 objection about not only the irrelevance of this line of  
3 questioning, but the prejudicial nature of it. Because the  
4 government is trying to create some sort of inference that if  
5 one bad instance happened before, that it must have happened  
6 again in High-Speed Swim Lane.

7 THE COURT: Well, I don't know about that. But you're  
8 free to cross-examine on that, or if you prefer, you can save  
9 it for argument. I don't think it's any ground for excluding  
10 the testimony that's been given so far, but feel free to pursue  
11 that on cross.

12 MR. HEFTER: Can I raise one more issue, briefly?

13 THE COURT: Yeah.

14 MR. HEFTER: That is these conversations that don't  
15 come in against Ms. Mairone, I have been trying not to object.

16 THE COURT: You have been very good on that. Maybe we  
17 should agree, since this really is only going to be of  
18 relevance largely on summations, and maybe I'll have to give a  
19 general instruction to the jury, but when you haven't objected  
20 so far and asked for a limiting instruction, it's come in  
21 against everyone. But if you want a continuing objection that  
22 any hearsay that is offered for its truth coming from employee  
23 of the bank, which therefore comes in against the bank as an  
24 admission, does not come in against Ms. Mairone, I'm happy to  
25 treat it as a continuing objection, which I sustain. But then

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1 the jury won't hear the limiting instruction each and every  
2 time. So you have to choose which you prefer. One way to  
3 handle it is to simply say -- I'll give you several options.  
4 You tell me what you prefer.

5 You could simply have here at the side bar a  
6 continuing objection, which I would sustain, and so it would be  
7 the understanding, which all counsel would abide by, on  
8 summation that nothing that was hearsay as to Ms. Mairone,  
9 therefore can be referred to on summation. And we might be  
10 able to devise an instruction to the jury in the final  
11 instructions, although it might be difficult, but I think the  
12 fact that summations would be limited in that way may be  
13 sufficient for your purposes.

14 Or I could give them an instruction now, which may or  
15 may not be still in their minds a week from now, but I would  
16 explain to them why this comes in against the bank but not  
17 against Ms. Mairone, and instruct them that that continues as  
18 to all such hearsay.

19 Or we could leave it to you, as you have so far, to  
20 just object when you really thought it was something  
21 sufficiently important that you wanted to make sure that the  
22 jury got the limiting instruction at the very time when that  
23 particular item was coming in.

24 So the last, of course, is the way traditionally it's  
25 done, but I'm happy for your convenience if you prefer to do it

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1 either the other two ways.

2 MR. HEFTER: Since, your Honor, it is 4 o'clock and I  
3 know we're breaking at 4:20, could I think about it and I will  
4 employ the latter of -- the third option for the next 20  
5 minutes?

6 THE COURT: All right. So I think as to the last  
7 answer we need a limiting instruction.

8 MR. HEFTER: Yes. Thank you.

9 (Continued on next page)

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1 (In open court)

2 THE COURT: Is the name of the fellow Robert  
3 Richardson?

4 MS. NAWADAY: Robert Price.

5 THE COURT: Okay. It needs some correction in the  
6 transcript.

7 So, ladies and gentlemen, as to the conversation with  
8 Mr. Price that the witness just testified about, that again is  
9 received and you may consider it for all purposes against the  
10 bank defendants, but not against Ms. Mairone.

11 I'll try to explain this a little to you. It is kind  
12 of technical, and I don't want to make you into lawyers because  
13 that's a fate I wouldn't wish on any of you. But, when a  
14 corporation or a company or a bank or another institution is a  
15 party to a case as Countrywide and Bank of America are here,  
16 the statements of its employees made in the course of their  
17 employment are evidence against that bank or that institution.  
18 So if the witness is reporting what someone at the bank said,  
19 you may consider it and give it whatever weight you think it  
20 warrants against the banks.

21 But, as to an individual, in this case Ms. Mairone, it  
22 is what we call hearsay, it cannot be considered as to her for  
23 technical reasons that are important, but which don't warrant a  
24 lengthy explanation.

25 So, that's the basic line that needs to be drawn. So

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1 this last conversation can be considered against the banks, but  
2 not against Ms. Mairone.

3 Now, this is all going to be made a lot easier for you  
4 when we get to summations, because when the parties summarize  
5 the evidence, and they get to summarize what the evidence is  
6 against the banks, or conversely, a lack of evidence, they will  
7 be referring to all the evidence that was admitted. But when  
8 they get to summing up with respect to Ms. Mairone, they will  
9 have to limit themselves to what was admitted against  
10 Ms. Mairone. So you'll have a much better way of how this  
11 plays out at that time. But I wanted to give you a little bit  
12 of a heads up.

13 Now that I know you're fully expert on this matter,  
14 we'll continue. Go ahead.

15 MR. HEFTER: I would just remind you also about the  
16 witness.

17 THE COURT: Yes. Thank you very much. Let me remind  
18 the witness to listen carefully to the questions put and be  
19 sure to limit your answer to the questions put.

20 THE WITNESS: Yes, sir.

21 THE COURT: Very good.

22 BY MS. NAWADAY:

23 Q. Mr. O'Donnell, apart from this e-mail exchange, did  
24 Mr. Price express concerns to you about the NCA process?

25 A. He did.

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O'Donnell - direct

1 Q. Can you tell me, did you have conversations with Mr. Price  
2 about the NCA process?

3 A. I did.

4 Q. Can you tell me specifically what concern he expressed.

5 MR. HEFTER: Objection, your Honor, as to Ms. Mairone.

6 THE COURT: So again, this is an example of evidence  
7 that will be received as to the banks, but not as to  
8 Ms. Mairone.

9 A. Robert expressed concern that loans were going to funding,  
10 so going through the cleared to close process, loan documents  
11 out the door, being signed, money being given out, that didn't  
12 qualify. Because conditions had not been appropriately  
13 cleared. And the loan ultimately wasn't of investment quality.

14 Q. You said the loans didn't qualify. What did you mean by  
15 that?

16 A. They weren't ready yet, so the conditions that were  
17 required by the loan program, by CLUES, were not in the file,  
18 had not been received and reviewed by an underwriter.

19 Q. When did Mr. Price express that concern to you?

20 A. He expressed that concern when he saw instances like this.  
21 He's sending this e-mail expressing that concern, but I met  
22 with Robert regularly about his operation. As I expressed  
23 earlier, that was part of my job to go to the centers, meet  
24 with management, review metrics, performance, including the  
25 quality of loans, and reports that we were receiving from

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O'Donnell - direct

1 corporate QC where loans were being identified as having  
2 problems.

3 MR. HEFTER: I move to strike as non-responsive.

4 THE COURT: This is a good example, Mr. O'Donnell.  
5 The question was "When did Mr. Price express that concern to  
6 you." And you began your answer "He expressed that concern  
7 when he saw instances like this." But then you went on to talk  
8 about it was part of your job to go to centers and meet with  
9 management, review metrics, performance, including the quality  
10 of loans and reports we were receiving from corporate QC where  
11 loans were being identified as having problems.

12 The question was when did Mr. Price express that  
13 concern to you. And that's the only question that you should  
14 answer.

15 So, the objection is sustained. The jury will  
16 disregard all but the first sentence of the previous answer.

17 Q. Mr. O'Donnell, did you pass along the concern that  
18 Mr. Price expressed to you to anyone else?

19 A. I did.

20 Q. Who did you discuss Mr. Price's concern with?

21 A. My boss, Cliff Kitashima.

22 Q. What did you say to Mr. Kitashima?

23 A. I alerted him to the fact that we had seen an instance like  
24 this. That there were loans that were being made, finalized,  
25 closed and signed and funded, that did not meet our standards



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1 and had problems.

2 Q. When did you have that conversation with Mr. Kitashima?

3 A. Around this time in June of 2007.

4 Q. Did you make any recommendations to Mr. Kitashima about  
5 changes to the NCA work flow?

6 A. I made two recommendations. I recommended that all NCA  
7 loans funded through Robert Price's center. So, at this period  
8 of time, Robert Price's team only supported the NCA for funding  
9 on an overflow basis. So at month end when there was a lot of  
10 volume, they would help. But I wanted that -- my  
11 recommendation was that all loans be funded through Robert's  
12 center so we would have better control to determine whether or  
13 not the conditions had been cleared appropriately. And the  
14 cleared to close was valid.

15 Q. What was the second recommendation that you made?

16 A. That the loan processors or loan specialists no longer be  
17 able to issue cleared to closes, that they go through the  
18 standard process and full effect of having an underwriter do  
19 that.

20 Q. Why did you make that recommendation?

21 A. I saw these instances as a problem. I wanted to have  
22 better quality and better control. We had had great experience  
23 with underwriters reviewing conditions and clearing loans  
24 appropriately. And we had that availability and capacity to do  
25 it for NCA, and I recommended that we apply that work flow to

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O'Donnell - direct

1 the existing NCA process.

2 Q. Were either of your recommendations followed?

3 A. The recommendation to fund all loans through the Richardson  
4 center was followed.

5 Q. Can you explain what you mean by funding through the  
6 Richardson center?

7 A. So, before we instituted that control, the loan processor  
8 could do the whole process themselves. They could clear the  
9 conditions, issue a cleared to close, draw the loan documents,  
10 and ultimately send money out the door. Fund the loan.

11 When we instituted the control, they could do  
12 everything up to reviewing the conditions and issuing the  
13 cleared to close, but they had to transfer the loan to the  
14 funding team who would make sure the cleared to close was valid  
15 first, then draw the actual loan documents, and they managed  
16 the process of funding the loan at the very end.

17 Q. Did there come a time when any other changes were made to  
18 the NCA process?

19 A. Ultimately the NCA process was absorbed into the Richardson  
20 fulfillment operation.

21 Q. What do you mean by the Richardson fulfillment operation?

22 A. It became part of central fulfillment later in 2007.

23 Q. Mr. O'Donnell, are you familiar with something called a  
24 High-Speed Swim Lane?

25 A. I am.

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1 Q. Can you tell us what that is.

2 A. The High-Speed Swim Lane was a work flow designed within  
3 Full Spectrum to help us move to a prime processing model. It  
4 was specifically designed to take lower risk loans, and process  
5 them more quickly.

6 Q. What, if any, involvement did you have in the High-Speed  
7 Swim Lane?

8 A. I was involved both in the High-Speed Swim Lane steering  
9 committee, and in the working group that worked on the project  
10 of developing a prime model for Full Spectrum.

11 Q. What was the steering committee?

12 A. The steering committee was made up of the leadership team  
13 within Full Spectrum. So, the managing directors who were the  
14 highest level of the company, Greg Lumsden, my boss Cliff  
15 Kitashima, Rebecca Mairone and others, myself included, Loren  
16 Rodriguez, I believe Jim Kee from production, Scott Bridges and  
17 Lloyd Sergeant from production, and we worked together to set  
18 out the strategy to develop a prime processing model.

19 Q. How, if at all, was that different from the working group  
20 that you mentioned?

21 A. The working group was much more detailed oriented. So we  
22 worked on how the whole process would actually be built. The  
23 criteria for which loans would go into the process, what roles  
24 and which employees would be involved, and we built a pilot to  
25 test the model we came up with.

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1 Q. Did the High-Speed Swim Lane go by any other names?

2 A. It was called the Hustle as well.

3 Q. Was there any one person in charge or in any leadership  
4 role with respect to the steering committee?

5 MR. HEFTER: Objection, your Honor. Compound.

6 THE COURT: I think those are effectively synonyms.  
7 If you want to examine him for more particularization, I'll  
8 allow it. But I think that's an okay question. Overruled.

9 A. The project of developing and implementing a new prime  
10 high-speed process was headed up by Rebecca Mairone.

11 Q. Mr. O'Donnell, are you familiar with the phrase turn time?

12 A. I am.

13 Q. Can you explain what turn time is?

14 A. In the simplest form, turn time is simply the number of  
15 days it takes from an application, a loan application to go  
16 from the starting phase all way through to funding.

17 Q. Did the High-Speed Swim Lane set any goals with respect to  
18 turn time?

19 A. The general goal was to fund loans in less than 15 days.

20 Q. Do you have an understanding of why that goal was set?

21 A. Well, Full Spectrum and Countrywide, for that matter,  
22 employed an originate and sell model. So we would originate  
23 the loans and then sell it to investors. And the faster you  
24 could get loans through the pipeline and sell them, the more  
25 loans you could do in a month, the more profits you could make,

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1 the more revenue available for the company.

2 Q. What, if any, role did underwriters have in the High-Speed  
3 Swim Lane?

4 A. Similarly to the NCA model that I talked about earlier,  
5 underwriters served as an escalation point in the high speed or  
6 the Hustle.

7 Q. What do you mean by escalation point?

8 A. A loan processor would escalate a file to an underwriter if  
9 the loan file -- the CLUES accept changed to a refer. So if  
10 there was a problem with the loan or if there was an exception,  
11 or if there was something complex they couldn't figure out, or  
12 if they didn't have the right level of authority to make a  
13 particular decision.

14 Q. Did underwriters have any role, apart from the escalation  
15 point that you just mentioned?

16 A. No.

17 Q. Was an underwriter required to review a High-Speed Swim  
18 Lane loan at any point in the work flow?

19 A. No. If the loan was a prime CLUES accept, and if it met  
20 the criteria, then there was no reason for the loan to go to an  
21 underwriter.

22 Q. What role did loan specialists play in the High-Speed Swim  
23 Lane?

24 A. They managed the pipeline for -- or they managed a pipeline  
25 of loans. So they own that loan from cradle to grave, A to Z.

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1 Their job was to take the loan shortly after application, work  
2 with the borrower to get it all the way through to funding.  
3 That would include reviewing the conditions, gathering  
4 documents from the borrower or third parties like a title  
5 company or flood insurance company or appraiser, reviewing the  
6 documents, making sure that all the right conditions were  
7 there, signing off on those conditions, and issuing the cleared  
8 to close.

9 Q. How, if at all, was the role of loan specialist in the  
10 High-Speed Swim Lane different from the role of loan specialist  
11 in the NCA work flow?

12 A. It was essentially the same as the NCA work flow before we  
13 made adjustments to it. So there was no separation of duty.  
14 They owned the process themselves as the loan processor.

15 Q. I believe you testified a minute ago that the High-Speed  
16 Swim Lane started out as a pilot. Is that correct?

17 A. That's right.

18 Q. Can you explain what you mean by that?

19 A. Full Spectrum frequently used pilots to test out new  
20 concepts or new processes. As I think I mentioned earlier, the  
21 company was growing very quickly. We had gone from funding two  
22 or 3,000 -- 3,000 loans when I joined a month to more than  
23 20,000 loans at one point. And that meant we had to change  
24 things. We had to constantly be developing new processes. We  
25 would often use a pilot, which would give us the opportunity to

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1 test that in a smaller group for a period of time to determine  
2 if our plan would really work, and would function well.

3 Q. Were you involved in selecting loan specialists for the  
4 High-Speed Swim Lane pilot?

5 A. I wasn't. The loan specialists didn't report to me. So I  
6 didn't know them individually very well. I knew some of them  
7 because they were in the centers where I worked and visited  
8 other groups that reported to me, but I didn't have a hand in  
9 selecting who would be part of the pilot.

10 Q. Did you have an understanding of how loan specialists were  
11 selected for the pilot?

12 A. The pilot was relatively small, so we tried to take people  
13 that had more experience. Because it was going to be a new  
14 process, we were going to be giving them authority, and we  
15 thought the people that had the best experience or most  
16 experience would be the best group to help test the process.

17 Q. Do you have an understanding of what, if any, training was  
18 given to loan specialists as part of the Hustle pilot?

19 A. For the pilot, really there wasn't any special training.  
20 The only training was on the new work flow itself. But beyond  
21 that, there wasn't really anything, any special kind of  
22 training.

23 Q. What do you mean that the only training was on the new work  
24 flow itself?

25 A. All the employees in Full Spectrum were used to one, one

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1 work flow or one model of business processing loans. We were  
2 making changes to that. So we, the managers over these teams,  
3 gathered them together and said, okay, these are the new steps  
4 that we are going to follow to process loans. This is what  
5 your role will be in that process. So it was just a matter of  
6 explaining. That served as the training.

7 Q. Was there a set time period for the Hustle pilot?

8 A. I believe the Hustle pilot ran from the middle of August  
9 through the end of September in 2007.

10 Q. Where was the Hustle pilot implemented?

11 A. The pilot ran in two of the centers, in Chandler, Arizona,  
12 and Richardson, Texas.

13 Q. When the Hustle pilot was implemented, was the NCA work  
14 flow still in operation?

15 A. It was, with slight adjustments.

16 Q. Was the NCA work flow still in operation in Richardson?

17 A. It was. That's where the NCA was located.

18 THE COURT: Counsel, find a point in the next five  
19 minutes where it is convenient to break and we'll let the jury  
20 go for tonight.

21 MS. NAWADAY: I'm actually at a change of topics right  
22 now.

23 THE COURT: That's what I was guessing. So, ladies  
24 and gentlemen, we will break for today. We'll start at 9:30  
25 tomorrow. Let me take the liberty of reminding you that you



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1 should not discuss the case with anyone else. You should not  
2 discuss the case even among yourselves. You should not try to  
3 do any Google research or any thing like that. You need to  
4 decide this case solely on the evidence here in the court. If  
5 you see anything by any unlikely chance in the media, turn away  
6 from it, don't pay any attention to it. And the most important  
7 thing is to have a good evening. We'll see you tomorrow.

8 (Jury excused)

9 THE COURT: Mr. O'Donnell, you can step down. We'll  
10 see you at 9:30 tomorrow.

11 THE WITNESS: Thank you.

12 (Continued on next page)

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1 THE COURT: Please be seated. Anything counsel needs  
2 to raise with the Court?

3 MR. ARMAND: Your Honor, with regard to the  
4 application that the defense made about Ms. Simantel's e-mail,  
5 it is true it is possible the Court's ruling will impact our  
6 decision making with respect to calling her, and she does live  
7 in California. And so, if there is a chance she may not fly  
8 out for her testimony based on the Court's ruling, it probably  
9 does make sense to save her the trip.

10 THE COURT: The pressure is really on me now. So when  
11 were you planning to call her?

12 MR. ARMAND: It would probably be Monday or Tuesday,  
13 depending on how quickly we go.

14 THE COURT: We'll have argument on it tomorrow.  
15 Because to ask her to come all the way to New York and possibly  
16 be forced to go to the theater or walk in Central Park or any  
17 of those terrible things would certainly be a hardship that I  
18 don't want to have to subject her to that.

19 All right. Anything else? We'll see you tomorrow at  
20 9:30.

21 (Adjourned until September 27, 2013, at 9:30 a.m.)  
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